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Superior

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 73

MARIANNA VON MOLTKE, PETITIONER,

vs.

A. BLAKE GILLIES, SUPERINTENDENT OF THE
DETROIT HOUSE OF CORRECTION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 24, 1947.

CERTIORARI GRANTED JUNE 2, 1947.

IN THE
United States Circuit Court of Appeals
FOR THE SIXTH CIRCUIT

(No.)

MARIANNA von MOLTKE,
Appellant,

vs.

A. BLAKE GILLIS,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

TRANSCRIPT OF RECORD

G. LESLIE FIELD,
Attorney for Petitioner and
Appellant,
2463 Penobscot Building,
Detroit 26, Michigan.

JOHN C. LEHR,
United States District Attorney,

VINCENT FORDELL,
Assistant United States Attorney,
Attorneys for Appellee.

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IN THE
United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

(No.)

MARIANNA von MOLTKE,
Appellant,

vs.

A. BLAKE GILLIS,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

TRANSCRIPT OF RECORD

PETITION FOR WRIT OF HABEAS CORPUS

(Filed February 7, 1946)

To the Honorable Judges of the District Court for the
Eastern District of Michigan, Southern Division:

Your petitioner, Grafyn Marianna von Moltke, respectfully shows:

1. That she is a resident of the City of Detroit, Wayne County, Michigan; that she has resided in Detroit since

August, 1930 and has resided in the United States since December 29, 1926, on which date she arrived in the United States with her husband, Heinrich von Moltke, who became a naturalized citizen of the United States in June, 1937, at Detroit, Michigan; that petitioner's application for naturalization is pending and has not as yet been acted upon; that petitioner is the mother of four children, one of whom, Henning von Moltke, is an invalid suffering from diabetes.

2. Petitioner is unjustly and unlawfully detained and imprisoned by color of the authority of the United States in the custody of A. Blake Gillies, Superintendent of the Detroit House of Correction at Plymouth, Michigan.

3. The cause or pretext of such detention and imprisonment is a certain order of commitment issued by this Court on a charge based upon Sec. 32, Title 50, USC, in Criminal Case No. 27301 dated November 15, 1944, ordering that petitioner be imprisoned and detained for a period of four years, copy of which order of commitment with the return thereto is attached hereto and marked Exhibit A.

4. Said restraint and imprisonment are illegal and in violation of the Constitution of the United States, particularly Amendments V and VI thereof, in that petitioner was neither aware nor properly advised of her right to have the assistance of counsel for her defense and did not understandingly waive the same, nor was petitioner properly and effectively provided with or afforded the assistance of counsel for her defense in accordance with the intent and purpose of the VIth Amendment to the Constitution of the United States in that regard; that contrary to the guarantee in the VIth Amendment to the Constitution of the United States, petitioner was deprived of her liberty without due process of law in that she was coerced, intimidated and deceived into making a plea of guilty notwithstanding her belief in the fact that she was innocent of the charges made against her; all of which is more particularly hereinafter set forth.

5. For many years prior to August 24, 1943, petitioner was a housewife and took care of her home where she lived with her husband and two of her four children; that petitioner has only a limited knowledge and understanding of the English language, having spoken the German language from birth; that petitioner has always spoken German in her home and has difficulty in expressing herself in English and in comprehending the same clearly; that petitioner is wholly unfamiliar with court proceedings and legal phraseology, having had no experience therewith prior to the date last mentioned; that petitioner's husband is a man of modest means, earning a small income, and that petitioner had no means or property of her own; that on August 24, 1943, at about 7 A. M., petitioner was arrested at her home by agents of the Federal Bureau of Investigation (hereinafter for brevity referred to as FBI) on a Presidential Warrant as a dangerous enemy alien and taken to the Federal Building, Detroit, Michigan, where she was finger printed, photographed, examined by a doctor and interrogated for approximately 12 hours by agents of the FBI, after which she was taken to the immigration detention home where she was held incommunicado despite her requests to see her husband so that she could arrange for the care and treatment of her youngest son, who is an invalid; that thereafter for several days petitioner was interrogated daily and held incommunicado; that she was not advised or informed of any charge having been made against her and was told by agents of the FBI that as an enemy alien she was not entitled to be represented by counsel; that on or about August 28, 1943, pursuant to petitioner's entreaties, an FBI agent called petitioner's husband on the telephone in her presence and relayed instructions to him as to the care and treatment of petitioner's invalid son, and that on the following day petitioner was permitted to talk to her husband for about fifteen minutes in the presence of an immigration inspector at the detention home; that on September 1, 1943 petitioner was taken before an enemy alien hearing board in said Federal Building where she was further

interrogated and advised that she was not permitted to have counsel to represent her; that on September 18, 1943, petitioner was handed a legal document by one of the detention home matrons, which document was later identified by an agent of the FBI as an indictment, but that petitioner was unable to comprehend the phrasology or import thereof and assumed that it was a step in the proceedings beginning with her arrest, and that she was not entitled to the benefit of counsel to assist and advise her in connection therewith; that on September 21, 1943, petitioner and another woman prisoner were taken before a Federal Judge in said Federal Building and told that he would appoint counsel for them if they were unable to employ one; that after petitioner and the other woman prisoner had stated their financial inability to retain counsel, they were taken to a room called the "bullpen," where they were interrogated by an assistant district attorney and later taken back before said Federal Judge, who thereupon designated an attorney present in the courtroom to represent petitioner and said other woman prisoner; that said attorney, so designated, stated to the Court that he preferred not to act as he was busy with a court case of his own, but as an accommodation to the court he would act, provided he would only be required to appear in connection with the arraignment of petitioner and said other woman prisoner; that thereafter said attorney held a hurried whispered conversation with petitioner in the courtroom, and asked petitioner how she wished to plead to the indictment; that petitioner replied that she was not guilty of anything and that, therefore, she wished to plead not guilty; that said attorney advised petitioner against pleading not guilty, giving a rapid, whispered legal explanation for his advice, which petitioner was unable to understand, and told petitioner to stand mute, the meaning of which was very vague to petitioner; that thereupon as petitioner is informed, she stood mute and a plea of not guilty was entered for her by the Judge, who then advised petitioner that he would send another attorney to her to represent her at her trial; that petitioner was thereupon taken to the Wayne

County jail, being unable to furnish bond of \$25,000; that thereafter petitioner remained in said jail from September 21, 1943, until November 18, 1944; that after September 21, 1943 petitioner was visited almost daily by agents of the FBI who interrogated petitioner and another woman prisoner; that said agents subjected petitioner to a subtle and continuous course of coercion, intimidation and deception calculated to put petitioner in a state of confusion and fear, overcome her will, destroy her belief in her own innocence and to cause petitioner to plead guilty to the charge in said indictment; that to accomplish these results, said FBI agents informed petitioner that the public was greatly aroused against persons accused of subversive activities, but that petitioner need have no fear, as the FBI would protect her; that the government had an iron-clad case against petitioner and that public feeling was running so high no jury would fail to convict her; that everyone else involved was pleading guilty and that it was useless to hold out against overwhelming odds; that if petitioner "cooperated" she would probably avoid a heavy sentence and might be put on probation; that petitioner did not have the benefit of counsel to advise her concerning the statements and representations made by said agents and that the attorney supposed to have been appointed for her by the Federal Judge never appeared; that one of said FBI agents informed petitioner he was an attorney from Texas and thoroughly familiar with the law in petitioner's case and advised petitioner that a person would be guilty of conspiracy by merely being present in the same room, with people discussing a plan, even though such person did not know such people, did not participate in the discussion and was not even aware that the plan was carried out; that between September 29, 1943 and October 7, 1943, petitioner was told by a fellow woman prisoner that unless she (petitioner) pleaded guilty, the FBI agents would take (arrest) petitioner's husband, whereupon petitioner became greatly disturbed and asked one of said FBI agents whether the information she had received was true; that said agent looked very stern and stated that

he could not answer petitioner's question but that if she "cooperated", she need never have any fear about her invalid son being well taken care of; that on October 7, 1943, without having received the assistance and advice of counsel and as a result of the foregoing, petitioner, accompanied by an assistant district attorney on her right, an agent of the FBI on her left and several other FBI agents standing to the rear of her, stood before another Federal Judge of this Court and pleaded guilty to the charge in the indictment, and signed, as petitioner is informed, a paper purporting to waive her right to be represented by counsel and to a jury trial; that thereafter petitioner became convinced that she had been betrayed and coerced into pleading guilty and that had she been provided with the assistance of counsel, she would not have so pleaded; that petitioner advised an agent of the FBI that she desired to withdraw her plea of guilty and have a trial and that said agent strongly advised her against doing so; that several days later petitioner was advised by an FBI agent that after sentence she could explain everything to the Judge, and submit a written statement to the probation officers and the newspapers thereby justifying her action in pleading guilty and further informed petitioner that the FBI office would typewrite her statements for her if she would write them out; that on January 15, 1944, an attorney sent to petitioner by her husband advised her concerning her rights including the presumption of innocence, that it was not necessary for her to prove her innocence, that there was no appeal from a sentence imposed upon a plea of guilty, and that petitioner had a legal right to withdraw her plea of guilty and have a jury trial; that thereafter petitioner made continuous attempts to change her plea and several times interviewed the United States District Attorney of this Court to that end; that on June 30, 1944, petitioner appeared before the Federal Judge before whom she had been arraigned and was advised by him that she had a legal right to change her plea but that it would be necessary for an attorney to prepare a written petition therefor and that he would appoint an attorney for that purpose; that thereafter such a petition was prepared and filed and that on November

15, 1944, after several delays and a written request by petitioner for a hearing thereon addressed to said Judge, a hearing was held on said petition at which time said Judge denied the petition and without interrogating petitioner or allowing her to testify, sentenced petitioner to imprisonment for a period of four years.

WHEREFORE your petitioner prays that a writ of habeas corpus be issued by this Court, directed to the said A. Blake Gillies, Superintendent of the Detroit House of Correction at Plymouth, Michigan, or any deputy superintendent, commanding him to produce the body of petitioner before this Court at a time and place therein to be specified, then and there to receive and do what this Court shall order concerning the detention and restraint of your petitioner or that said A. Blake Gillies or any deputy superintendent may be required to show cause why a writ of habeas corpus should not issue herein as prayed for and that your petitioner be ordered discharged from the detention and imprisonment aforesaid.

(S) Grafyn Marianna von Moltke
Petitioner.

(S) G. Leslie Field

(S) William O'Neill Kronner.

G. Leslie Field,
2463 Penobscot Building,
Detroit 26, Michigan.

William O'Neill Kronner,
2480 Penobscot Building,
Detroit 26, Michigan,
Attorneys for Petitioner.

County of Wayne—ss.

GRAFYN MARIANNA von MOLTKE being duly sworn, deposes and says that she is the petitioner named in the foregoing petition subscribed by her; that she has read

the same and knows the contents thereof, and the said statements are true as she verily believes.

(S) Grafin Marianna von Moltke

Subscribed and sworn to before me
Feb. 4, 1946.

(S) Mona L. Burrows,
Notary Public, Wayne County, Mich.
My commission expires 12-22-47.

(Notarial Seal.)

EXHIBIT A

Judgment and Commitment

DISTRICT COURT OF THE UNITED STATES

(Seal)

United States

v.

Grafin Marianna von Moltke

No. 27301

Criminal in one counts for violation of U.S.C., Title
50, Sec. 34.

(Filed Nov. 27, 1944)

On this 15th day of November, 1944, came the United States Attorney, and the defendant Grafin Marianna von Moltke, appearing in proper person, and being represented by counsel, Harry Okrent.

The defendant having been convicted on her plea of guilty of the offense charged in the above-entitled cause, to wit: Conspiracy to violate Espionage Act (Sec. 32,

Title 50 U.S.C.) and the defendant having been now asked whether she has anything to say why judgment should not be pronounced against her, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of four (4) years from this day, in a Federal Institution to be designated by the Attorney General, or his authorized representatives.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshall or other qualified officer and that the same shall serve as the commitment herein.
Approved as to form.

John C. Lehr, District Attorney.

(Signed) Edward J. Moinet,
United States District Judge.

The Court recommends commitment to Alderson, West Virginia.

(A True Copy.)

Certified this 15th day of November, 1944.

(Signed). George M. Read,
Clerk.

(By) May J. Dealy,
Deputy Clerk.

Return

I have executed the within Judgment and Commitment as follows:

Defendant delivered on Nov. 15, 1944, awaiting transfer to institution designated.

Defendant delivered on Nov. 18th to the Superintendent at House of Correction, Plymouth, Mich., the institution designated by the Attorney General, together with certified copy of the within Judgment and Commitment.

John J. Bare,
U. S. Marshal.

By Francis C. Woodruff,
Deputy.

AFFIDAVIT IN SUPPORT OF WRIT OF HABEAS CORPUS

(Filed Feb. 21, 1946)

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

ARCHIE KATCHER, being first duly sworn, deposes and says:

That presently he is engaged in the practice of law with offices at 2366 Penobscot Building, City of Detroit, Wayne County, State of Michigan; that from the time of his admission to practice in 1940, and including September 21, 1943 and until November, 1943, he was continuously employed as a Clerk for the Referee in Bankruptcy in the District Court of the United States for the Eastern District of Michigan Southern Division;

That your deponent is the Archie Katcher whose name is signed to the Appearance entered in the above cause as attorney for Grafyn Marianna VonMoltke and Emma Elise Leonhardt for their arraignment only, and that this affidavit is made in connection with the circumstances leading up to and surrounding such appointment at their arraignment before the Honorable Edward J. Moinet, United States District Judge, on September 21, 1943;

That on September 21, 1943, your Deponent was engaged in the trial of a criminal case before the Honor-

able Edward J. Moinet, United States District Judge, when the Court interrupted the proceedings, and requested Deponent to represent Grafyn Marianna Von-Moltke and Emma Elsie Leonhardt, co-defendants in a conspiracy case who had just been brought into the courtroom; that Deponent advised the Court that he preferred not to represent said co-defendants for certain reasons disclosed to the Court; that the Court informed Deponent that he would only be required to appear for said co-defendants on their arraignment, and that the whole matter would take only a few minutes; that being so advised Deponent agreed to represent said co-defendants at their arraignment only;

That your Deponent then went over to where the two women were seated in the courtroom and informed them of his appointment as counsel for their arraignment; that your Deponent then asked them collectively, but not individually, whether they knew what the proceedings were about, and that one of the women (whose identity Deponent cannot exactly recall at this time) replied that she understood, and the other nodded in the affirmative; Deponent then asked them collectively whether they were guilty or innocent of the charges made against them, and that both said co-defendants indicated to Deponent that they were not guilty, and stated they wished to plead not guilty; Deponent then attempted to point out to said co-defendants the advantages of standing mute, and thereupon Deponent accompanied said co-defendants before the Court and informed the Court that they stood mute; that a plea of not guilty was thereupon entered for them by the Court. Later on the same day, Deponent entered his formal appearance for both co-defendants, and that the foregoing represents the full extent of Deponent's representation and assistance as counsel for said co-defendants;

That Deponent's conference with said co-defendants took place in said courtroom and was conducted in a whisper as Court was in session; that Deponent had not time and did not see or examine the indictment in the above-entitled case, and did not discuss the charges there-

in contained, the legal implications thereof, nor the possible defenses thereto with said co-defendants and that the entire conference with said co-defendants was a hurried, whispered one and occupied only a few minutes in time.

Further Deponent sayeth not.

(S) Archie Katcher.

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

On this 20th day of February, A.D. 1946, before me, a Notary Public in and for said County and State, personally appeared Archie Katcher, who being by me first duly sworn, did depose and say that he has read the foregoing affidavit, that the same is true of his own knowledge except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

(S) Hamie Owen,
Notary Public,
Wayne County, Michigan.

My commission expires 3/18/46.

AFFIDAVIT IN SUPPORT OF WRIT OF HABEAS CORPUS

(Filed Feb. 21, 1946)

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

HARRY OKRENT being first duly sworn, deposes and says that he is a member of the State Bar of Michigan and was admitted to practice October 25, 1938; that at the present time and since August 1, 1942 he has been continuously employed and associated with the law firm

of Berger, Manason & Kayes, 1550 National Bank Building, Detroit, Michigan;

Deponent further says that on September 25, 1943, he and Isadore Berger, senior member of said firm, visited Grafyn Marianna von Moltke at the Wayne County jail on behalf of her husband, Heinrich von Moltke, who had been a former instructor of Deponent at Wayne University: that Deponent and Berger made said visit primarily to enable Deponent to advise Heinrich von Moltke what steps to take and secondarily to determine the advisability of representing Marianna von Moltke at the trial of her case; that before making said visit deponent had been advised by Heinrich von Moltke that neither he nor his wife had any funds or property with which to retain or pay counsel, and deponent was also aware of the fact that Heinrich von Moltke was relieved of his duties at Wayne University shortly following the arrest of his wife.

Deponent further says that during the interview with Grafyn Marianna von Moltke, she appeared to be highly nervous, unstrung and distraught and that her principal concern was for her husband and diabetic child; that she was apparently unable to carry on a connected conversation and to respond well to questions; that she frequently interrupted the questioning to make inquiries about her son and her husband and requested Deponent to give certain instructions to her husband concerning the treatment and care of her son, which Deponent assured her he would do.

Deponent further says that neither during said interview nor at any other time prior to the time Deponent represented Grafyn Marianna von Moltke on her motion to withdraw her plea of guilty did either he or Isadore Berger (who saw her only once and in Deponent's presence) discuss with her any possible legal defenses to the charges made against her, nor did they advise or discuss with her the nature or implications of such charges or in any way suggest or intimate to her what they might have considered her legal rights to be or what course

of action she should pursue; that to the best of Deponent's recollection and belief the only interview he had with Grafyn Marianna von Moltke until after January 1, 1944, was the one on September 25, 1943 at the Wayne County jail.

Deponent further states that sometime shortly after said interview he advised Heinrich von Moltke that neither he nor his firm would be able to take the case.

(S) Harry Okrent.

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

On February 20, 1946, before me, a Notary Public in and for said County, personally appeared Harry Okrent who being by me duly sworn did depose and say that he has read the foregoing affidavit by him subscribed and that the same is true of his own knowledge except as to matters therein stated to be on information and belief and as to those matters he believes it to be true.

(S) Hamie Owen,
Notary Public, Wayne County, Mich.

My commission expires 3/18/46.

ORDER TO SHOW CAUSE

(Filed Feb. 7, 1946)

At a session of said Court held in the Federal Court House at Detroit, Michigan, February 7, 1946.

Present: Honorable Ernest A. O'Brien, District Judge.

Good cause appearing therefor, and upon reading and filing the petition for writ of habeas corpus herein:

It Is Ordered that A. Blake Gillies, Superintendent of the Detroit House of Correction at Plymouth, Michi-

gan, or any deputy superintendent, appear before this Court on the 21st day of February, 1946 at 11:00 o'clock in the forenoon, to Show Cause, if any he has, why a writ of habeas corpus should not be issued as prayed for, and that a copy of this order and of the petition for such writ be served upon such superintendent or deputy superintendent and upon the United States District Attorney for this district within two days from the date hereof.

Ernest A. O'Brien,
District Judge.

ORDER FOR WRIT OF HABEAS CORPUS

(Filed Feb. 21, 1946)

At a session of said court held at the Federal Court House at Detroit, Michigan, this 21st day of February, 1946.

Present: Honorable Ernest A. O'Brien, District Judge.

This matter coming on to be heard upon an order to show cause why writ of habeas should not issue herein and the answer thereto, and this Court having heard the arguments of counsel and being duly advised in the premises:

It Is Ordered that writ of habeas corpus issue as prayed for in said petition returnable for hearing before this Court on March 11th, 1946, at 2 o'clock P.M.

Ernest A. O'Brien,
District Judge.

WRIT OF HABEAS CORPUS

(Filed March 9, 1946)

The President of the United States to A. Blake Gillies, Superintendent of the Detroit House of Correction at Plymouth, Michigan, or any deputy superintendent, Greetings:

We Command that you have the body of Grafin Marianna von Moltke by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name she shall be called or charged, before the District Court of the United States in and for the Eastern District of Michigan, Southern Division, at the Federal Court House in Detroit, Michigan, on the 11th day of March, 1946, at 2 o'clock P.M., to do and receive what shall then and there be considered concerning the said Grafin Marianna von Moltke, and have you then and there this Writ.

Witness the Honorable Ernest A. O'Brien, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, this 21st day of February, 1946.

George M. Read,
Clerk of the District Court of the
United States for the Eastern
District of Michigan, Southern
Division.

By Albert L. Allred,
Deputy Clerk.
(Seal of Court)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

(Filed Feb. 20, 1946)

Now comes A. Blake Gillies, Superintendent of the Detroit House of Correction at Plymouth, Michigan, by John C. Lehr, United States Attorney, and files this Answer to Show Cause why a Writ of Habeas Corpus should not be issued as prayed for in the Petition filed in this matter.

1. In answer to the allegations contained in Paragraph 1, he does not have any information in regard thereto, and therefore he does not deny or admit the same but leaves the Petitioner to her proofs.

2. In answer to the allegations contained in Paragraph 2, he denies that she is unjustly and unlawfully detained and imprisoned under the authority of the United States.

3. In answer to the allegations contained in Paragraph 3, he admits the same.

4. On information and belief he denies any and all allegations contained in Paragraph 4.

5. On information and belief he denies any and all allegations contained in Paragraph 5 in which the Petitioner claims that she was either misled, coerced or betrayed in waiving her rights under law. On information and belief he further denies that any misrepresentations of any kind were made to her by any of the persons mentioned in her Petition and that no undue influence, pressure or constraint was ever exerted upon her by any of the persons mentioned in her Petition at any time whatsoever.

6. On information and belief he further states that an indictment was returned by the Grand Jury of the United States for the Eastern District of Michigan, Southern Division, on the 17th day of September, 1943, charging the Petitioner herein with conspiracy to violate Section

32, Title 50 USC, known as the Espionage Act, a certified copy of said indictment is hereto attached, marked Exhibit A, and made a part hereof.

7. On information and belief he further states that on September 22, 1943, the Petitioner herein was arraigned on said indictment before the Honorable Edward J. Moinet, District Judge, for the Eastern District of Michigan, Southern Division, and that at the time thereof, the Petitioner stood mute and the Court entered a plea of not guilty, as shown by the docket entry of the United States Clerk, a certified copy of which is hereto attached, is marked Exhibit B and is made a part hereof.

8. On information and belief he further states that on October 7, 1943, the Petitioner did enter a plea of guilty to the aforementioned indictment and at the same time did sign and execute a waiver of counsel and right to a jury trial, a certified copy of the entry of said plea is hereto attached, marked Exhibit C, and made a part hereof and a certified copy of said waiver is hereto attached, marked Exhibit D and made a part hereof.

9. On information and belief he further states that on August 7, 1944, the Petitioner filed a Motion, with an affidavit in support thereof, for leave to withdraw her plea of guilty, a copy of said Motion and affidavit are hereto attached, marked Exhibits E and F and made a part hereof.

10. On information and belief he further states that on November 15, 1944, the Motion of this Petitioner for leave to withdraw her plea of guilty was argued by her counsel and that on the same day an Order was entered by the Court denying said Motion, a copy of said Order is hereto attached, marked Exhibit G, and made a part hereof.

11. On information and belief he further states that on November 15, 1944, a sentence of four years was imposed upon the Petitioner and an Order of Commitment was issued by the Court ordering this Petitioner committed to the custody of the Attorney General or his

authorized representatives for imprisonment in a Federal Institution to be designated by the Attorney General, or his authorized representatives, a copy of said Order of Commitment is hereto attached, marked Exhibit H and made a part hereof.

12. On information and belief he further states that the affidavit, which this Petitioner executed and filed in support of her motion to withdraw her plea of guilty and referred to herein as Exhibit D, contains the following statement: "That she does not charge that any physical threats were made by the Federal Bureau of Investigation or by the Office of the United States District Attorney, nor were any promises directly made to her to induce her to plead guilty."

13. On information and belief he further states that the Petitioner did enter her plea of guilty to the indictment referred to herein as Exhibit A, voluntarily and understandingly, and voluntarily and understandingly waived her right to be represented by counsel. He further states that at no time were threats, physical violence or undue influence exerted upon her, nor were any promises of any kind made to the Petitioner to induce her to plead guilty to the said indictment.

Wherefore, he moves that the Order to Show Cause filed in this matter be dismissed and the Petition for Writ of Habeas Corpus be denied.

A. Blake Gillies.

On this 19th day of February, A.D. 1946, personally appeared the above named, A. Blake Gillies, who made oath that he has read the foregoing Answer by him subscribed and that he knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated to be on information and belief and as to those matters he believes it to be true.

John C. Miller,
Notary Public, Wayne County, Mich.
My commission expires: Dec. 5, 1949

PETITIONER'S EXHIBIT 1

Vio: Section 34, Title 50, USC

UNITED STATES OF AMERICA

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION**

Of the June Term, A.D. 1943

The Grand Jurors of the United States of America, duly empaneled and sworn at the June Term of the District Court of the United States for the Eastern District of Michigan, Southern Division, and inquiring for that District, on their oaths present:

That continuously, and at all times from the first day of December, 1938, to the date of the presentation and filing of this indictment, at the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Court, at Manhattan, New York; at Chicago, Illinois; at Berlin, Germany; at Budapest, Hungary; at Lisbon, Portugal; at Stockholm, Sweden; at Couronncas, Switzerland; and at other places to the Grand Jurors unknown,

THERESA BEHRENS, alias Teri Behrens, alias Therese Behrens, alias Mrs. Theresa Behrend, alias Terus, alias Teruce, hereinafter referred to as Theresa Behrens;

GRACE BUCHANAN-DINEEN, alias Grace Buchanan, alias Grace Dineen, alias Miss Smith, hereinafter referred to as Grace Buchanan Dineen;

BERTRAND STUART HOFFMAN, alias Bert Hoffman, hereinafter referred to as Bertrand Stuart Hoffman;

CARL JOHN WILHELM LEONHARDT, alias Karl Leonhardt; hereinafter referred to as Carl John Leonhardt;

EMMA ELISE LEONHARDT, alias Mrs. Karl Leonhardt, hereinafter referred to as Emma Elise Leonhardt;

WALTER JOSEPH ABT, alias Walter Abt, hereinafter referred to as Walter Abt;

DR. FREDERICK WILLIAM THOMAS, alias Dr. Fred William Thomas, alias, Dr. Thomas, hereinafter referred to as Dr. Fred William Thomas; and

GRAFIN MARIANNA VON MOLTKE, alias Countess Von Moltke, hereinafter referred to as Grafin Marianna Von Moltke;

the defendants herein, whose full and true names are, other than as herein stated, to the Grand Jurors unknown, unlawfully, wilfully and feloniously did combine, conspire, confederate and agree together, one with the other and each with the other; and with the government of the German Reich, and with

CARLOS GALINO DaSILVA;

SARI DeHAJEK, alias Seri DeHajek, alias Charlotte Rozinek, alias Mrs. Gyula Rozinek, hereinafter referred to as Sari DeHajek;

THEODORE DONAY, alias Theo Donay, hereinafter referred to as Theodore Donay;

One ILSE, whose true last name is to the Grand Jurors unknown;

MARTHA KAUFMAN;

GEORGE KREIS;

DR. JOHN LOENNGREN;

MR. MILLER, alias Mr. Muller, whose true first name is to the Grand Jurors unknown;

OSKAR RENNER;

GYULA ROZINEK, alias Gyula DeHajek, alias Julius Rozinek, alias Jules Rozinek, hereinafter referred to as Gyula Rozinek;

INGEBORG SAENGER, alias Ingeborg Rozinek Saenger, alias Ingelein, hereinafter referred to as Ingeborg Saenger;

SENHORA ISABEL MACHADO SANTOS;

ERNA SCHOLZ;

DR. SPAUN, alias Mr. Fillier, whose full, true name is to the Grand Jurors unknown, hereinafter referred to as Dr. Spaun;

COUNT LINGEN VEVEY; and

HEINRICH WILLMES;

whose full and true names are, other than as herein stated, to the Grand Jurors unknown, and with divers other persons whose names are to the Grand Jurors unknown who are not named herein as defendants, but are hereinafter referred to as co-conspirators, to commit offenses against the United States, to-wit: to violate Section 32, Title 50, USC (Act of June 15, 1917, Chapter 30, Title 1, Section 2; 40 Stat. 218) in the manner and by the means hereinafter set forth.

It was the plan and purpose of said conspiracy that the defendants and co-conspirators would communicate, deliver, and transmit and attempt to communicate, deliver and transmit, and aid and induce each other and divers other persons to the Grand Jurors unknown, to communicate, deliver and transmit to a foreign government, to-wit: the government of the German Reich, and to representatives, officers, agents, employees, subjects and citizens thereof, documents, writings, code books, signal books, sketches, photographs, photographic negatives, blueprints, plans, maps, models, notes, instruments, appliances, and information relating to the national defense of the United States, with intent and reason to believe that said documents, writings, code books, signal books, sketches, photographs, photographic negatives, blueprints, plans, maps, models, notes, and instruments, appliances and information would be used to the injury of the United States and to the advantage of a foreign

nation, to-wit: the government of the German Reich, and that the defendants and co-conspirators, while the United States was at war with the government of the German Reich, would collect, record, publish, communicate and attempt to elicit information with respect to the movements, numbers, descriptions, condition and disposition of the armed forces, ships, aircraft, and war materials of the United States, and with respect to works and measures undertaken for and in connection with and intended for the fortifications and defense of places, and with respect to other information relating to the public defense which might be useful to the enemy, the said German Reich, with intent that the same would be communicated to the enemy; to-wit: the government of the German Reich.

It was a part of said conspiracy that the government of the German Reich and certain of the co-conspirators, including Gyula Rozinek, Sari DeHajek, Dr. Spaun, Ilse, and George Kreis, as agents, representatives, and employees of said government of the German Reich, would direct, encourage and maintain the defendants and certain of the co-conspirators within the United States for the purpose of communicating, delivering, and transmitting the aforementioned material and information relating to the national defense of the United States to the government of the German Reich, and for the purpose of collecting, recording, publishing, communicating and attempting to elicit the aforementioned information relating to the public defense of the United States, which might be useful to the enemy, to-wit: the government of the German Reich.

It was further a part of said conspiracy that the defendants and divers other persons to the Grand Jurors unknown would be employed in various capacities and activities within the United States for the purpose of being in a position to communicate, deliver and transmit, and attempt to communicate, deliver and transmit, and to aid and induce divers other persons to the Grand Jurors unknown to communicate, deliver and transmit said material and information relating to the national

defense of the United States to the government of the German Reich, and for the purpose of collecting, recording, publishing, communicating and attempting to elicit said information relating to the public defense of the United States which might be useful to the enemy, to wit: the government of the German Reich.

It was further a part of said conspiracy that certain of the co-conspirators, including:

Ingeborg Saenger, at Stockholm, Sweden,

Erna Scholz, at Stockholm, Sweden,

Dr. John Loenngren, at Stockholm, Sweden,

Martha Kaufmann, at Stockholm, Sweden,

Carlos Galino DaSilva, at Lisbon, Portugal,

Senhora Isabel Machado Santos, at Lisbon, Portugal,

George Kreis, at Lisbon, Portugal,

Oskar Renner, at Budapest, Hungary, and

Count Lingen Vevey, at Couronncas, Switzerland,

would establish and maintain addresses at such respective places for the purpose of receiving said material and information and further, that said co-conspirators would reside at said respective places and would receive such material and information from the defendants, which said material and information the said co-conspirators would forward, communicate, deliver, and transmit to the government of the German Reich and to certain of the other co-conspirators within the Axis-dominated countries, including Gyula Rozinek, Sari DeHajek, Dr. Spaun, and George Kreis, and to divers other persons within Germany to the Grand Jurors unknown.

It was further a part of said conspiracy that certain of the defendants, including Grace Buchanan Dineen, Theresa Behrens, Carl John Leonhardt, Emma Elise Leonhardt, and Grafyn Marianna von Moltke, would meet

and confer with each other and with persons who are not defendants or co-conspirators, for the purpose of eliciting information relating to the public defense which might be useful to the government of the German Reich.

It was further a part of said conspiracy that the information obtained and collected as aforesaid, relating to the national and public defense of the United States would be communicated to the government of the German Reich by various and sundry means, including invisible writing processes; that certain of the defendants, including Grace Buchanan Dineen, Theresa Behrens, Dr. Fred Williams Thomas, and the co-conspirators, including Theodore Donay, would procure and furnish the chemicals and ingredients for the preparation of said processes;

OVERT ACTS

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and find that certain of said defendants, conspirators and co-conspirators herein designated, at the several times and places hereinafter mentioned, actually did and performed certain things and overt acts in pursuance of and in execution of and to effect the object of said conspiracy, that is to say:

I.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Gyula Rozinek, on December 23, 1938, at New York, New York, entered the United States at the port of New York;

II.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Sari DeHajek, on December 23, 1938, at New York, New York, entered the United States at the port of New York;

III.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Gyula Rozinek, during the

spring of 1939, the exact date being to the Grand Jurors unknown, and hence not set forth herein, traveled out of the United States to Mexico and on March 27, 1939, at Laredo, Texas, re-entered the United States;

IV.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Sari DeHajek, during the month of May, 1939, departed from the United States and traveled to Budapest, Hungary;

V.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Gyula Rozinek, on February 27, 1940, at Los Angeles, California, procured an extension of his permission to remain in the United States until July 2, 1941;

VI.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Theresa Behrens, on March 14, 1941, at Detroit, Michigan, wrote a letter to I. S. Wixon, District Director, United States Immigration Service, San Francisco, California;

VII.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Theresa Behrens, on April 1, 1941, at Detroit, Michigan, wrote a letter to I. S. Wixon, District Director, United States Immigration Service, San Francisco, California;

VIII.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Theresa Behrens, at Detroit, Michigan, on or about April 12, 1941, executed a "Bond Conditioned for the Delivery of an Alien" in behalf of Gyula Rozinek;

IX.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Sari DeHajek and Grace Buchanan Dineen, at Budapest, Hungary, met and conferred during the month of May, 1941;

X.

That in pursuance of said conspiracy and to effect the object and purpose thereof, Sari DeHajek, Gyula Rozinek and Grace Buchanan Dineen, during the month of June, 1941, at Budapest, Hungary, met and conferred;

XI.

That in pursuance of said conspiracy and to effect the object and purpose thereof, at Budapest, Hungary, Sari DeHajek, Gyula Rozinek, Dr. Spaun and Grace Buchanan Dineen met and conferred, on or about the 10th day of July, 1941;

XII.

That on or about August 21, 1941, in pursuance of said conspiracy and to effect the object and purpose thereof, Grace Buchanan Dineen and Gyula Rozinek traveled from Budapest, Hungary, to Berlin, Germany;

XIII.

That on or about August 22, 1941, in pursuance of said conspiracy and to effect the object and purpose thereof, in Berlin, Germany, Ilse conferred with Grace Buchanan Dineen and instructed her in the use of secret ink and microphotographs;

XIV.

That on, about and during the days of October 4, 5, 6, 7 and 8, 1941, in pursuance of said conspiracy and to

effect the object and purpose thereof, Grace Buchanan Dineen traveled from Budapest, Hungary, to Lisbon, Portugal;

XV.

That on or about October 10, 1941, at Lisbon, Portugal, in pursuance of said conspiracy and to effect the object and purpose thereof, Grace Buchanan Dineen met and conferred with George Kreis;

XVI.

That on or about October 27, 1941, in pursuance of said conspiracy and to effect the object and purpose thereof, Grace Buchanan Dineen arrived at and entered the United States at the port of New York;

XVII.

That on or about November 1, 1941, in pursuance of said conspiracy and to effect the object and purpose thereof, Grace Buchanan Dineen traveled from New York, New York, to Detroit, Michigan;

XVIII.

That on or about November 1, 1941, in pursuance of said conspiracy and to effect the object thereof, at Detroit, Michigan, Theresa Behrens and Grace Buchanan Dineen met and conferred at 2230 Witherell Street;

XIX.

That on or about November 1, 1941, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens and Grace Buchanan Dineen visited the Statler Hotel, Detroit, Michigan, and there collaborated in dispatching cablegrams to Carlos Galino DaSilva and Senhora Isabel Machado Santos;

XX.

That on or about November 1, 1941, in pursuance of said conspiracy and to effect the object thereof, Bertrand Stuart Hoffman, Theresa Behrens and Grace Buchanan Dineen met and conferred at 2230 Witherell Street, Detroit, Michigan;

XXI.

That on or about November 2, 1941, in pursuance of said conspiracy and to effect the object thereof, Theresa Berhens, Dr. Fred William Thomas and Grace Buchanan Dineen met and conferred at 1508 Eaton Tower, Detroit, Michigan;

XXII.

That on or about November 3, 1941, in pursuance of said conspiracy and to effect the object thereof, Grace Buchanan Dineen traveled from Detroit, Michigan, to New York, New York;

XXIII.

That on or about December 19, 1941, in pursuance of said conspiracy and to effect the object thereof, Grace Buchanan Dineen traveled from New York, New York, to Detroit, Michigan;

XXIV.

That on or about December 20, 1941, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens, Grace Buchanan Dineen, and Marianna Von Moltke met and conferred at 4553 Seebaldt Avenue, Detroit, Michigan;

XXV.

That on or about December 20, 1941, in pursuance of said conspiracy and to effect the object thereof, Dr.

Fred William Thomas, and Grace Buchanan Dineen met and conferred at 1508 Eaton Tower, Detroit;

XXVI.

That on or about December 21, 1941, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Grace Buchanan Dineen deposited for safe keeping with Theresa Behrens \$1,000 of money which had been furnished to Grace Buchanan Dineen by George Kreis;

XXVII.

That on or about March 18, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens wrote and mailed letters to Ingeborg Saenger at Stockholm, Sweden, and to Sari and Gyula Rozinék in care of said Ingeborg Saenger;

XXVIII.

That on or about March 22, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens assisted Grace Buchanan Dineen in preparing and dispatching a cablegram to Ingeborg Saenger at Stockholm, Sweden;

XXIX.

That on or about March 28, 1942, at 4553 Seebaldt Avenue, Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Marianna Von Moltke introduced Edward Arndt to Grace Buchanan Dineen;

XXX.

That on or about March 29, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Marianna Von Moltke met and conferred with Grace Buchanan Dineen;

XXXI.

That on or about June 20, 1942, at Grosse Pointe, Michigan, in pursuance of said conspiracy and to effect the object thereof, Marianna Von Moltke met and conferred with Grace Buchanan Dineen;

XXXII.

That on or about January 27, 1943, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Marianna Von Moltke, Theresa Behrens, Emma Elsie Leonhardt and Grace Buchanan Dineen met and conferred at the residence of Grace Buchanan Dineen;

XXXIII.

That on or about March 30, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens arranged a conference between Grace Buchanan Dineen and one Frank P. Illsley;

XXXIV.

That on or about April 29, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens met and conferred with Heinrich Willmes;

XXXV.

That on or about September 10, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens presented to Grace Buchanan Dineen an officer in the Naval forces of the United States;

XXXVI.

That on or about October 7, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object

thereof, Theresa Behrens met and conferred with Grace Buchanan Dineen;

XXXVII.

That on or about August 29, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Walter Abt met and conferred with Grace Buchanan Dineen;

XXXVIII.

That on or about October 6, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Walter Abt, Carl John Leonhardt, Emma Elise Leonhardt met and conferred with Grace Buchanan Dineen;

XXXIX.

That on or about October 19, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Walter Abt met and conferred with Grace Buchanan Dineen;

XL.

That on or about November 16, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Walter Abt met and conferred with Grace Buchanan Dineen;

XLI.

That on or about December 16, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens, Carl Leonhardt, Emma Elise Leonhardt and Grace Buchanan Dineen met and conferred with one William Reinhardt;

XLII.

That on or about April 14, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Dr. Fred William Thomas met and conferred with Grace Buchanan Dineen

XLIII.

That on or about April 27, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Dr. Fred William Thomas furnished to and supplied Grace Buchanan Dineen with chemicals for making secret ink;

XLIV.

That on or about July 21, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Dr. Fred William Thomas met and conferred with Grace Buchanan Dineen;

XLV.

That on or about November 12, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Dr. Fred William Thomas met and conferred with Grace Buchanan Dineen;

XLVI.

That on or about November 28, 1942, at Detroit, Michigan, in pursuance of said conspiracy and to effect the object thereof, Dr. Fred William Thomas furnished to and supplied Grace Buchanan Dineen with chemicals for making secret ink;

XLVII.

That on or about May 8, 1942, at Detroit, Michigan, Bertrand Stuart Hoffman, in pursuance of said con-

spiracy and to effect the object thereof, met and conferred with Grace Buchanan Dineen;

Against the peace and dignity of the United States and contrary to the form of the Statute of the United States in such case made and provided (Section 34, Title 50, USC).

John C. Lehr,
United States Attorney
for the Eastern District
of Michigan.

John W. Babcock,
Assistant U. S. Attorney.

This is a true bill.

.....
Foreman

EXHIBIT "C"**(Filed Oct. 7, 1943)****IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION****United States of America****vs.****Cr. #27301****Grafin Mariana Von Moltke**

**At a session of said Court held in the City of Detroit
on October 7, A.D. 1943.**

**Present: Honorable Arthur F. Lederle, U. S. District
Judge.**

CHANGE OF PLEA

The defendant Grafin Mariana Von Moltke being present in Court, and having been fully informed of her constitutional rights to counsel, waives the appointment of counsel by the Court; thereupon by leave of the Court withdraws her plea of not guilty heretofore entered herein, and pleads guilty as charged in the indictment heretofore filed against her.

Thereupon the Court does now defer sentence without date, and refers the case to the United States Probation Officer for this District for investigation and report, and remands defendant into custody of the United States Marshal.

**Arthur F. Lederle,
U. S. District Judge.**

EXHIBIT E

MOTION FOR LEAVE TO WITHDRAW PLEA OF GUILTY

Now comes Marianna von Moltke, defendant in the above entitled cause, by Harry Okrent, her attorney, and files this, her motion for leave to withdraw her plea of guilty heretofore entered, and for leave to plead not guilty in said cause, for the following reasons:

1. That she is not guilty of the crime charged;
2. That the plea of guilty heretofore entered by said defendant was made under circumstances of extreme emotional stress and during a time of extreme mental disturbance, without knowledge of her legal rights and without a thorough understanding of the nature of the offense charged;
3. That justice requires that she be permitted to change her plea;
4. That the acceptance by the Court of the plea of guilty is a violation of Amendment 6 to the Constitution of the United States insofar as the defendant herein did not, until the date of the entry of said plea of guilty, have the assistance of counsel, as provided for in said Amendment 6.

Wherefore, defendant prays that an order be entered withdrawing the plea of guilty heretofore entered, and striking same from the records of said Court, and permitting defendant to enter a plea of not guilty.

This motion is based upon the files and records of this Court and cause, and upon the affidavit in support of said motion, filed in said cause.

Harry Okrent,
Attorney for Defendant,
1550 National Bank Building,
Detroit 26, Michigan.
Cherry 8028.

Dated: Detroit, Michigan
August 7th, 1944

EXHIBIT F**AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE
TO WITHDRAW PLEA OF GUILTY**

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS:

MARIANNA von MOLTKE being first duly sworn, deposes and says:

That she is the defendant in the above entitled cause and that she makes this affidavit in support of her motion for leave to withdraw plea of guilty filed therein;

That on, to-wit: August 24th, 1943 she was arrested on a Presidential Warrant as a dangerous enemy alien and committed for detention in the Immigration Detention Home in the City of Detroit, Wayne County, Michigan;

That at the time of her arrest she did not know that a federal indictment had been issued charging her with a criminal offense; that the said indictment was handed to her on, to-wit: September 18th, 1943, and that she appeared before the Honorable Edward J. Moinet, District Judge of the United States on, to-wit: September 21st, 1943; that between the 24th day of August, 1943, and, to-wit: the 21st day of September, 1943, she had not had the opportunity of consulting with any attorney and had not been advised that it was her right to have the assistance of counsel; that attorney Archie Katcher was appointed by the Honorable Edward J. Moinet to represent her at the time of her arraignment before the said Honorable Edward J. Moinet on, to-wit: September 21st, 1943; that she had a very brief conversation with the said Archie Katcher, and that she did not discuss the merits of the case or the probabilities of defense with him, but the substance of their conversation related only to the advisability of standing mute rather than enter a plea of not guilty, and for general reasons of policy said

Archie Katcher advised her to stand mute, and that on said day a plea of not guilty was entered for her;

That on, to-wit: August 25th, 1943, her husband, an instructor at Wayne University in the City of Detroit, was suspended and relieved of his duties;

That her youngest son, aged ten years, suffers of diabetes, and he requires constant supervision and attention; that this fact, together with the fact that her husband had been relieved of his position and that he is not equipped to earn a livelihood by any means other than by teaching, disturbed her greatly; that she feared that the health of her youngest would be seriously impaired because of her incarceration and because her husband would not be able to earn sufficient funds to provide the necessary attention; that she did not know, and was not told, that an accused person benefits by the presumption of innocence, under the American system of jurisprudence; and that she felt her situation to be completely hopeless because she knew of no way in which she could prove her innocence; that she has since been informed of the presumption of innocence which attaches to a person accused of crime, and that she feels that, under these circumstances, she cannot possibly be convicted of the crime with which she is charged because she is not guilty; but that on, to-wit: September 28th, 1943 she saw no hope and no future for herself or her family, and on said date discussed with Assistant District Attorney John W. Babcock the advisability of pleading guilty in said cause, and suggested that she would possibly do so if she could be assured that the newspaper publicity which had so harmed her husband and family would stop, and if assurances could be given to her that she would not be deported after serving whatever term she was sentenced to serve, and if she could serve said sentence in an institution not too far away, so that she could see her husband and children from time to time; that said Assistant District Attorney John W. Babcock advised her that he could not assure her that the newspaper publicity would stop since he had no control over

the press; that he felt confident that her sentencing, if she pleaded guilty, would be in an institution not too far away, and that he felt, although he could not assure her of this, that deportation would not follow her release from incarceration after serving her sentence;

That in addition to herself, the defendants Hoffman, Behrens, Thomas, Buchanan-Dineen, Leonhardt, Leonhardt, and Abt were arrested at about the same time she was arrested, and that prior to, to-wit: October 7th, 1943 all but Hoffman and Thomas had pleaded guilty; that she was told repeatedly during her conversations with Mr. Dunham and Mr. Kirby of the Federal Bureau of Investigation, that Dr. Thomas would plead guilty, and that the entry of his plea was just a matter of time; that she was told repeatedly that her refusal to plead guilty would result in her being the only person to go on trial, with the attendant newspaper publicity that such a trial would necessarily entail; that she does not charge that any physical threats were made by the Federal Bureau of Investigation or by the Office of the United States District Attorney, nor were any promises directly made to her to induce her to plead guilty; that she does state however, that she was informed prior to, to-wit: October 7th, 1943, by Mrs. Theresa Behrens, a co-defendant, that if she failed to plead guilty, her husband would be implicated in the affair, and that although, on due consideration at the present time, she feels that it was ridiculous to attach any significance to this statement by Mrs. Behrens, at the time in question, because of her extreme state of nervousness, apprehension, despondency, and fear, she then felt on said date that the statement made by Mrs. Behrens could have a basis in fact;

That between to-wit: September 28th, 1943 and October 7th, 1943, while considering the advisability and desirability of pleading guilty, she discussed the matter at length with Mr. Collard and with Mr. Kirby of the Federal Bureau of Investigation on numerous occasions; that she asked Mr. Collard whether her husband was in any way involved in the matter, and that Mr. Collard replied to

her that he was sorry but that he could give her no information concerning that fact, and that although at present she realizes that that was a perfectly proper and normal answer, at the time it was given to her, because of her state of mind, this was confirmation of the statement made to her by Mrs. Behrens;

That in her discussion with Mr. Collard and other gentlemen of the Federal Bureau of Investigation she had called to their attention that is she pleaded guilty the Judge would not know how lightly she was implicated in the matter, if at all, and that if she was guilty at all it was because she had committed an error in judgment and not because she had any intent to be part of any conspiracy or to injure the United States of America in any way; that she might plead guilty if there were a way of calling to the sentencing Judge exactly what she did; that she was then informed that she could make her complete statement to the Probation Officer and that the said Probation Officer would file a report with the sentencing Judge and that, in this way, the exact facts could be gotten before the said sentencing Judge;

That on, to-wit: Thursday, October 7th, 1943 she was brought to the office of Mr. John W. Babcock, Assistant United States District Attorney, and informed him that, although she felt in her heart she was not guilty, she saw no other course but to plead guilty; that in the absence of the Honorable Edward J. Moinet she was taken before the Honorable Arthur F. Lederle, District Judge of the United States, at which time she was asked by said Judge Lederle whether she wished to plead guilty, and that she replied that she did; that the Honorable Judge Lederle then asked whether the indictment had been explained to her; that although it had not been explained to her, neither Mr. Babcock nor Mr. Collard, who were present with her in Court, assisted her in her dilemma, and that because, she had at that time determined to go through with the plea of guilty, she answered that it had been explained to her, although in fact it had not; that the moment she left the Courtroom on said date she turned

to Mr. Collard and informed him that the indictment had not been explained to her and that she felt that she had done the wrong thing; that between to-wit: September 21st, 1943 and October 7th, 1943 she did not have any advice of counsel or assistance of counsel;

That at about the end of October, 1943 she saw Mr. Collard at the County Jail, where she was confined, and advised him that she felt that she had made a big mess of things by pleading guilty; that it was not the proper thing to do;

That she did not know, and that no one informed her that she could request permission to withdraw her plea of guilty, and that she thought she had done an irrevocable act;

That from October, 1943 to around Christmas of 1943 she, on occasion, restated this conclusion to Messrs. Kirby, Dunham, Collard and Hanaway of the Federal Bureau of Investigation; that during the Christmas holidays she learned for the first time that a plea of guilty was not necessarily a final and irrevocable act, and that under certain circumstances the plea could be withdrawn; that she was so informed by a co-defendant who had been so informed by a visitor;

That on, to-wit: January 5th, 1944 she asked her Chief Matron to call Mr. Collard of the Federal Bureau of Investigation; that she advised Mr. Collard, when she saw him on said date, without revealing the source of her information, that she had the right to request permission to change her plea, and that she intended to do so; that she felt it was unfair to herself and her family to permit the people of Detroit to draw their conclusions from her plea, and that the sentencing Judge would not have the facts before him; that she was informed that she could write a statement for the press and inform the Judge of the facts before her sentence;

That on, to-wit: January 17th, 1944 she told Mr. Dunham of the Federal Bureau of Investigation, that she was still determined to withdraw her plea of guilty if she

could do so; that she was informed on said date that the District Attorney's Office was very busy on the Thomas case, which was scheduled to commence on, to-wit: January 20th, 1944, and that consequently she could not expect to have an opportunity to discuss the matter of the change of her plea with the District Attorney's Office in the immediate near future, but that Dr. Dunham would speak to the District Attorney and make her wishes clear;

That on, to-wit: January 18th, 1944 Messrs. Collard and Hove of the Federal Bureau of Investigation, saw her at the County Jail; that Mr. Huff advised her of the usual procedure in such matters and informed her that she could contact the Office of the United States Marshall and be brought before the Judge; but Mr. Huff further advised her that the Federal Bureau of Investigation requested that she work through them and the District Attorney rather than through the Marshall's Office, and that if she had definitely decided to withdraw her plea, and continued to feel that way in the near future, she could contact the District Attorney's Office rather than the Office of the United States Marshall;

That on, to-wit: January 20th, 1944, she contacted the Office of the United States District Attorney through her Matron at the County Jail; that in the afternoon of said date she was taken to the Office of the United States District Attorney, where she saw Mr. Lehr and Mr. Babcock; that she informed them that she wished to change her plea, and that Mr. Lehr informed her that he could see her point and that it was her right to request permission to withdraw her plea, but that he would appreciate it if he were given sufficient time to go over her statement which she had formerly given to the District Attorney, and that it would take about one week's time to dispose of the Thomas trial, at which time he would be able to go into the matter of her statement once again; that at the end of one week the Thomas trial was still on, and that shortly thereafter she again contacted the Office of the District Attorney, which procedure Mr. Lehr, the United States District Attorney, had asked her to follow

rather than to contact the Federal Bureau of Investigation; that she could not see Mr. Lehr because the Thomas trial continued until the end of February, 1944; that shortly after the conclusion of the Thomas trial, she had her Matron contact Mr. Lehr and asked if he did not want to go ahead and review her statement, would it be satisfactory if she made the usual arrangements through the Office of the United States Marshall; that she was advised that Mr. Lehr had requested a little additional time because he was leaving the city for a few days and that he would attend to her matter immediately upon his return;

That on, to-wit: March 13th, 1944 she again contacted the Office of the District Attorney and she was informed that the District Attorney wished her to wait a few days longer; that she saw Mr. Collard and Mr. Lehr on, to-wit: March 17th, 1944 and again affirmed her intention of withdrawing her plea, if possible;

That on, to-wit: the 24th day of March, 1944 she again saw Mr. Lehr, and the review of the statement was completed; that from said date until the end of April, 1944 she waited patiently in her cell at the County Jail expecting momentarily to be taken before the Honorable Edward J. Moinet;

That on, to-wit: April 23rd, 1944 Mr. Kirby of the Federal Bureau of Investigation advised her that Mr. Lehr was in Washington and asked her to be a little more patient, and that as soon as Mr. Lehr returned her matter would be attended to; that because she realized that Mr. Lehr was a busy man, and because she was extremely cooperative and did not want to hurry the Office of the United States District Attorney, and because she felt that any investigation they cared to make should be made by them without any attempt by her to rush matters, she made no further attempt to contact Mr. Lehr, and that on, to-wit: the 24th day of June, 1944 she was finally informed by the Office of the United States District Attorney that she would be called before the Honorable Edward J. Moinet on, to-wit: the 26th or the 27th

day of June, 1944, and that on the 29th day of June, 1944 she noticed an item in the Detroit Free Press which stated that she would be in Court on the 30th day of June, 1944;

That on, to-wit: June 30th, 1944 she was taken before the Honorable Edward J. Moinet, at which time she advised him that she wished to change her plea; that Judge Moinet informed her that she was entitled to representation by counsel, and that an attorney ought to make a motion for permission to withdraw her plea, and that if she had a preference as to counsel he would appoint such counsel as she desired him to appoint; that the matter was left in abeyance while she tried to select counsel;

That on, to-wit: July 3rd, 1944 she sent a letter to Judge Moinet advising him that she had no preference, and that she is now informed that Harry Okrent has been appointed counsel for the purpose of moving that she be allowed to withdraw her plea;

Further deponent saith not.

Marianna von Moltke.

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

On this seventh day of August, 1944 before me, a Notary Public in and for said County and State personally appeared Marianna von Moltke who, being by me first duly sworn, did depose and say that she has read the foregoing Affidavit in Support of Motion for, Leave to Withdraw Plea of Guilty by her subscribed; that the same is true of her own knowledge except as to the matters stated therein to be upon information and belief, and as to those matters she believes it to be true.

(Sgd) Edward A. Trullard,
Notary Public,
Wayne County, Michigan.

My commission expires March 8, 1946.

EXHIBIT C

ORDER DENYING MOTION TO WITHDRAW
PLEA OF GUILTY

At a session of said Court, held on the 7th floor of the Federal Building in the City of Detroit, State of Michigan, on the 16th day of November, A.D. 1944.

Present: the Honorable Edward J. Moinet, United States District Judge.

This cause having come on for hearing upon the motion of the defendant Grafyn Marianna von Moltke for leave to withdraw her plea of guilty, heretofore entered, and for leave to enter a plea of Not Guilty to the indictment filed herein, the matter after hearing, having been submitted, the Court, after consideration of said motion and of the arguments presented on behalf of the respective parties hereto, specifically finds:

1. That the defendant Grafyn Marianna von Moltke was properly advised of her constitutional rights by the Court, both prior to and at the time she entered her plea of Guilty to the indictment;

2. That the plea of Guilty, entered several weeks after the filing of the indictment and her arraignment thereon, was submitted after due and careful deliberation;

3. That the defendant was advised of and thoroughly understood the nature of the charge contained in the indictment filed in this cause;

4. That no promises or inducements or threats were made for the purpose of obtaining the plea of Guilty, and that the entry of the plea of Guilty was not due to any misrepresentations;

5. That the motion praying for leave to withdraw the plea of Guilty was not filed within the period fixed by Rule II (4) adopted by the Supreme Court of the United States of America;

Wherefore, It Is Ordered that the said motion to withdraw the plea of guilty entered by the defendant Grafin Marianna von Moltke in the above entitled cause, be and the same is hereby denied.

Edward J. Moinet,
United States District Judge.

SPECIAL APPEARANCE

To the Clerk of said Court:

Please enter my appearance as attorney for defendants, Emma Elise Leonhardt and Grafin Marianna von Moltke, in accordance with the order of the Honorable Edward J. Moinet, District Judge, appointing me as their counsel, for arraignment only.

Dated: September 21, 1943.

Archie Katcher,
2420 National Bank Building,
Detroit 26, Michigan.
Cadillac 3855.

TRANSCRIPT OF TESTIMONY

Proceedings had and testimony taken before the Honorable Ernest A. O'Brien, District Judge, at Detroit, Michigan, on Monday, March 11, 1946, beginning at two o'clock in the afternoon.

Present:

Vincent Fordell, Esq., Assistant United States Attorney, appearing for the Respondent, the United States of America.

G. Leslie Field, Esq. and William O'Neill Kronner, Esq., appearing for the Petitioner, Grafin Marianna von Moltke.

MARIANNA von MOLTKE was thereupon called as a witness for and in her own behalf, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kronner:

My full name is Grafin Marianna von Moltke. Grafin means "Countess" in English. I have never used that title in the United States. The name is used in this proceeding because it was probably in my passport and was the title given to me by the government. But my name is Marianna von Moltke. On August 24, 1943 I lived at 4553 Seyburn Avenue, Detroit, with my husband and my two children in the house where I was arrested. My husband was an instructor of German at Wayne University. Up to that time I had never had any contact with the courts or been involved in any court proceeding. I had never been a witness or been arrested. I had lived in Detroit since August 16, 1930. My youngest child is ill. He has sugar diabetes. He required at that time two injections of insulin per day and a strict diet. The insulin had to be administered and the diet was one that had to be supervised in accordance with instructions from a physician. I took care of that child constantly.

Q. Now on August 24, 1943 what happened?

A. I believe it was between 6 and 7 o'clock in the morning the FBI came to my house. There was six gentlemen, and Mr. Bert Collard, Jr. arrested me as he said on a presidential warrant.

Q. What did these men do when they came to your house?

A. Well, Mr. Collard said that I have to go with him in the living room, and I got dressed; I was in bed; and went with them.

Q. Did they search the house?

A. They asked permission of my husband to search the house, and he gave his permission. I turned my pocketbook over to my husband. I did not know that these men were coming.

Q. And then what happened?

A. I was taken to the Federal Building, to the offices of the Federal Bureau of Investigation. I was fingerprinted and photographed, and after that a Federal doctor took my pulse, and then afterwards I was questioned by Mr. Hanaway and Mr. Collard.

I was detained at the Immigration Detention Home, I believe it is called on Jefferson Avenue. I was questioned on the 24th, on the 25th on the 26th and on the 27th by Mr. Collard and Mr. Hanaway. I believe the gentlemen called for me around 10 o'clock in the morning, and we went to the building and the questioning lasted until 8, or 9 o'clock at night. During that time I was not allowed to see anybody else. I was kept in one room, and the room was locked, and I was released out of that room on the 28th of August, at around 6 o'clock in the evening. Up to that time I had not seen my husband.

Q. Up to that time did you have any word as to whether your diabetic child was being taken care of?

A. On the second day Mr. Collard was kind enough to get the permission from his superior to call my house and Mr. Collard talked to my husband, and I was sitting by, and he related what my husband said to him, and what he told him on my questioning. During this period of questioning by Mr. Collard and Mr. Hanaway they were courteous to me. They did not threaten me. They were friendly to me.

Q. And did they get your confidence?

A. Yes.

Mr. Fordell: I object to that last question, did they get her confidence.

The Court: There is no jury here to be affected by it.

Mr. Fordell: All right; I just want to object to conclusions.

The Court: All right. The witness evidently is a very intelligent witness. I do not think she needs much leading.

Q. (By Mr. Kronner): Finally was there a hearing before any Board?

A. At that time, or near that time, September the 1st I was called before the Enemy Alien Hearing Board.

I was taken there at 3:30 in the afternoon. The hearing was held at 10 o'clock.

Q. Up to that time did you know why you were being detained?

A. I did not. The only thing I knew it was on a presidential warrant, as a dangerous enemy alien.

Q. Did anybody tell you whether you could have an attorney or not?

A. No, but Mr. Hove said that the FBI is an investigating agency, and not a prosecuting, and as an enemy alien I was not allowed to see an attorney.

Q. Were you ever told that at any other time?

A. Mr. Keenan at the Immigration interpreted the notice for the Enemy Alien Hearing Board. It was stated that some friends or relatives or counsel could listen in at the Alien Hearing, but that I was not to be represented by a legal attorney.

Q. What was the next happening, if any, in connection with your detention?

A. On September 18th, around four o'clock in the afternoon, the indictment was handed to Mrs. Leonhardt and one to myself by the matron. It looked like a typewritten report. I don't know how many pages.

Q. Did you understand what—the nature of it?

A. I did not.

Q. Did you read it?

A. Yes.

Q. At that time what did you call this document, at that time?

A. I did not know what to call that; I only could read—to my knowledge that would be an indictment.

Q. You called it an "indictment?"

A. Yes.

Q. Did anybody at that time inform you as to the nature of the charges in there?

A. No.

Q. Did you understand what was meant by a conspiracy?

A. I did not.

Q. You did not understand any of the charges in that document?

A. No, I only saw that things called "over" Acts. I did not have anything to do with that.

Q. What happened on the 21st of September?

A. On the 21st of September, after ten o'clock, Marshal Paige from the Marshal's office took us from the Immigration Building to the Federal Building, and Marshal Flynn brought us up to Judge Moinet's court—Mrs. Leonhardt and myself.

Q. What happened on your arrival there?

A. Judge Moinet was on the bench, and he informed Mrs. Leonhardt and me that we were entitled to counsel; in fact, he said that we had to have counsel, and Mrs. Leonhardt misunderstood Judge Moinet and said she had the means to appoint counsel, and I informed the counsel that I had no money, and Judge Moinet said he would appoint a counsel and attorney right away and would not have us arraigned before we had seen the attorney.

Q. What time was that—was that in the morning or afternoon?

A. It must have been in the morning, sir, around eleven or twelve o'clock.

Q. Did you remain, then, in the courtroom?

A. We were brought then to the bull pen to wait for the attorney.

Q. Were you taken back to the courtroom?

A. Mr. Babcock came down and informed Mrs. Leonhardt and I that she misunderstood the question; that she had no means to have an attorney. Mr. Babcock suggested going back to the courtroom of Judge Moinet and have this straightened out, and we both went along with Mr. Babcock to Judge Moinet's court.

Q. Then what happened?

A. The court was in session. Judge Moinet was on the bench, and there seemed to be a trial going on, because Judge Moinet appointed a lawyer in the courtroom. He said, "Come here, 'so-and-so', and help these two women out," and the young lawyer objected to that; he said he didn't want to have anything to do with that. But then he consented just for the arraignment, to help out, and he came over to us—we were sitting on the side bench—and he asked me, "How do you want to plead?" I said, "Not guilty." And he asked Mrs. Leonhardt, and she said the same thing. So he told us that, he whispered

to us, in fact, he went over it, whispered that it would not be advisable, but I do not know even now why, but he suggested it would be proper to stand mute.

Q. Did he explain the indictment to you?

A. No, he didn't see the indictment, sir.

Q. Did he tell you and advise you as to the nature of the charges against you?

A. He did not.

Q. The only advice he gave you was in connection with the plea?

A. Of entering the plea, as he called it.

Q. And he represented the two of you?

A. Yes, sir.

Q. And he talked to the both of you?

A. Yes, sir.

Q. And about how long a period of time was it that you had this conference with this attorney?

A. I would say three to five minutes the most.

Q. And you and Mrs. Leonhardt were sitting down?

A. Yes.

Q. And he was standing up?

A. Whispering to us.

Q. Was the conversation—the entire conversation—a whispered one?

A. Yes.

Mr. Fordell: I am going to object to some of these questions as being suggestive—"Was the conversation a whispered one?"

The Court: Undoubtedly they are, but the Court won't be influenced for that reason.

Mr. Fordell: All right.

Mr. Kronner: I tried to make my question as direct as possible.

The Court: They are very leading—you realize that, do you not? You know therefore they are objectionable. It is only in the interest of expedition that I am allowing it.

Q. Then what happened, after your conference with the attorney?

A. We were brought to the Wayne County Jail.

Q. And your plea was entered by the Court?

A. We stood mute and it was entered.

Q. Now, then, do you recall whether or not Judge Moinet made any further statement about an attorney?

A. Judge Moinet said he would appoint an attorney right away, and I understood that the gentleman was to be expected to come right away.

Q. Then where were you taken?

A. To the Wayne County Jail, That was on the 21st of September.

Q. Tell what happened between the 21st of September and the 28th of September.

A. On the 22nd of September Mrs. Behrens was brought into the Wayne County Jail, and I asked the matron to be kept by myself. The matron informed Mrs. Leonhardt and myself that she had strict orders to keep us incommunicado.

Q. Who were the other occupants of the cell block in the Wayne County Jail?

A. Mrs. Leonhardt and Mrs. Behrens.

Q. Now, what happened between the—were you visited by the agents of the Government?

A. Yes, since September 23 the agents of the Government visited us daily except Sunday.

Q. Do you recall who the agents were?

A. Mr. Kirby, and Mr. Dunham I believe, and I believe Mr. Hanaway—Mr. Collard and Mr. Hanaway.

Q. Did they visit you and question you during that time?

A. Mr. Kirby and Mr. Dunham were the questioners of Mrs. Behrens, and they had some business to straighten out with her. Afterwards they would visit in the cell block, and we would have conversations and discussions on certain things.

Q. Will you tell what some of those conversations were between you and the agents?

A. It was very strange, because whenever those gentlemen had left Mrs. Behrens, she would say—

The Court: (Interposing): No, no, no! Not what any third party said; just the agents.

Mr. Kronner: Did you ever tell the agents of the Government what Mrs. Behrens said?

A. We had a conversation on that. I wouldn't say Mrs. Behrens said that, but we would strike at a conversation of certain things of interest; as to hostile publicity, and sentiment, and cost of the trial, and the inquisition of the Federal Judge, and the—oh things which were in the interest of the trial, and our present state.

Q. Who did you have this conversation with, about publicity, and trial, and cost as to—charges of—

A. Oh, current things.

Q. Who did you have the conversation with?

The Court: More important—with whom did she have the conversation?

A. With Mr. Durham, and sometimes with Mr. Kirby, and whoever came to visit us. I called for Mr. Collard at the end of the first week; Mrs. Behrens was called into the office of Mr. Lehr. Mr. Babcock and Mrs. Behrens came back and—

Mr. Fordell: Just a minute! I will object.

The Court: No third party—

Q. (By Mr. Kronner): Don't tell what Mrs. Behrens said to you.

A. . . . I didn't believe what she told, so I called for Mr.—

Mr. Fordell: Just a minute! I think she is testifying to what Mrs. Behrens told her.

Mr. Kronner: Don't testify, Mrs. von Moltke, to what—to any conversation you had with Mrs. Behrens alone.

Q. May I ask you this question: Did this conversation with Mrs. Behrens take place in the presence of the agents of the Government?

A. No.

Q. All right. Did you tell any of the agents of the Government about the conversation that you had?

A. I called for Mr. Collard, and Mrs. Collard was kind enough to come over, because after what Mrs. Behrens said I was desperate.

Mr. Fordell: I am going to object to that testimony and have it stricken from the record.

Mr. Kronner: Wait just a minute. She hasn't testified to anything Mrs. Behrens said.

The Court: Yes she has. It will be stricken. Go ahead now.

Q. Did you tell Mr. Collard anything about the conversation that you had

A. I did tell him, and asked Mr. Collard—the purpose was to hear from Mr. Collard some information as to the indictment. I didn't understand that.

Q. Up to that time had anybody ever given you any advice as to the indictment at all?—

A. No.

Q. And who was Mr. Collard?

A. Mr. Collard is a member of the FBI.

Q. Now then—will you tell the conversation you had with Mr. Collard?

A. I brought my indictment to the office, and assured Mr. Collard it was—I told Mr. Collard that he has taken my statement and he knew that I never was—I didn't do those things which are called "Over" Acts, and Mr. Collard explained to me that the indictment doesn't cover the charge, and I seemed not to be able to understand, so Mr. Collard explained the indictment to me by an example which he called the "Rum Runners."

Q. Tell how he advised you and what he said.

A. This is what I understood: That if there is a group of people in a "Rum" plan who violate the law, and another person is there and the person doesn't know the people who are planning the violation and doesn't know what is going on, but still it seemed after two years this plan is carried out, in the law the man who was present becomes . . . the person nevertheless is guilty of conspiracy. And I said to Mr. Collard: "If that is the law in the United States, I don't know how I ever can prove myself innocent, and how will any judge know how am I guilty if this is the law?" Mr. Collard then told me about the Probation Department, of which I had not heard before, and he explained to me that it is the duty of this office—the Probation Department—to collect the proper data and to present it to the judge, so that the judge will know what to go by.

Q. Did you believe Mr. Collard, and did you have confidence in him?

Mr. Fordell: Just a minute! I object to self-serving conclusions.

The Court: Objection sustained.

Q. (By Mr. Kronner): Did Mr. Collard tell you or give you or say anything to you that would cause you to believe that he knew how to advise you?

Mr. Fordell: I object to that as calling for a conclusion.

The Court: She may answer. Was he a lawyer—is that what you mean?

Mr. Kronner: Yes, your Honor.

The Witness: I knew Mr. Collard was a lawyer.

The Court: How did you know?

The Witness: Mr. Collard told me so, and Mr. Collard told me that at one time—that is what I understood—he served with the Prosecutor's Office; I don't know, but I understood Assistant Prosecutor. I knew Mr. Collard has been practicing law and that he was qualified to answer my question, and that he was kind enough to do so.

Q. (By Mr. Kronner): That conversation that you just related, between you and Mr. Collard, occurred after the 21st?

A. Yes.

Q. Do you recall approximately how long after the 21st?

A. Approximately it was Monday, the 27th of September. That is what I recall. I might be mistaken.

My husband sent Mr. Okrent, an attorney, in and Mr. Okrent was accompanied by his law partner, Mr. Berger. That was September 25. Up to that time I had not seen or been visited by or communicated with my husband. I did not know whether my husband knew where I was.

Q. Did Mr. Berger or Mr. Okrent advise you in connection with the charges in the indictment, or give you any legal advice?

A. I did not ask them to advise me. I was interested in my family affairs and my children; and my husband, I had read in the paper, had disposed of his job, and I was wondering what he was doing.

Q. Was there anything said at that time as to whether they would represent you?

A. No. Mr. Berger just said my husband had asked him to see me and that he would let my husband know he would consider taking this case.

Q. Up to that time had any other attorney advised you?

A. No, sir.

Q. Were you waiting for any attorney?

A. I was, waiting for an attorney.

Q. What attorney?

A. Please?

Q. What attorney were you waiting for?

A. The attorney which Judge Moinet was going to appoint for me.

Q. Up to that time did any agents of the Government say anything to you about an attorney?

A. No, I didn't talk about attorneys.

Q. Did you discuss with the agents, during the period from the 21st to the 28th of September, your concern about your child and your husband?

A. I did.

Q. Will you tell the substance of the conversation between you and the agents on that subject?

Mr. Fordell: I would like to have her name the agents.

Q. Name the agents.

A. I talked to Mr. Dunham about it, and Mr. Dunham was very sympathetic and understanding. He was, in fact, the one who brought the Children's Aid around, that they would at least take care of and place my child finally, because the child had no home . . . taken in by a certain family who was not willing to take care of him since it was a very complicated case, and Mr. Dunham and Kirby advised Dr.—, and it was finally through Mr. Dunham's kindness that the child has been placed.

Mr. Fordell: When this take place, this arrangement for the child? Ask her.

The Witness: Until this was arranged, it was such a long process. In November, finally, Mr. Dunham succeeded.

Q. (By Mr. Kronner): Did you discuss your concern with Mr. Dunham, or any other agents?

A. I did. Mr. Dunham knows how I felt about it, and I think Mr. Collard, too, and Mr. Kirby.

Q. Did you visit the District Attorney's office on the 28th?

A. Yes. After I had this talk with Mr. Collard, I explained it to Mrs. Leonhardt, what I understood, what Mr. Collard had said to me, and on Tuesday morning, the 28th of September, Mr. Hanaway happened to be in the cell block, and I said to Mr. Hanaway: "As the matter stands, and as I understand the situation, I am supposed to plead guilty," because it was said that this would be the only possible thing; that the other people in Milan would plead guilty the next week, and that I would be willing to cooperate, but I would like to have assurance from Mr. Babcock, and that was that the publicity would be stopped right away, and that if I am sentenced I would not be sent very far away so I could keep contact with my family and know about my child, and that I never will be deported," and Mr. Hanaway said he would relay this message to Mr. Babcock, and the same afternoon Mr. Hanaway and Mr. Dunham came back and said Mr. Babcock wanted to see us—Mrs. Leonhardt and myself—and we were brought to the Federal Building and were in the bull pen in the Marshal's office. Mr. Babcock came down to that place and I said to Mr. Babcock that I understand the situation and I know that he wants me to plead guilty, so if I plead guilty I do it to cooperate. I am not guilty, but I have a child in high school and a sick child in grammar school, and that my family has to go through a terrific amount of parchment. I repeated to Mr. Babcock what you might call the conditions, and Mr. Babcock said as to the publicity there is not much he could do because there is free press, and as to the sending away, that is a matter which is to be taken up with Mr. Bennett, and he explained how one has to go about it, but said he would give reasons that they would consider this ill condition of my child and would not send me away; and as far as the deportation is concerned, Mr. Babcock did not believe that I would

have to face that because I had three American-born children and an American husband, but in the event of war he could not say what the future would have, because he didn't know whether he was in office the next year, but he was quite sure that if he was in his position, he would gladly give me a recommendation, and he was sure Mr. Lehr would do so, too, and he ended his speech by saying, "I can't help you make a decision one way or the other because that is your own—what you have to decide; I am not permitted to inform you, but I want you to keep in mind, after all, we are human." This is what Mr. Babcock said to me in the bull pen on September 28, in the afternoon. And Mr. Dunham was out to get my husband, because I hadn't seen him since September 24; and I believe Mr. Hanaway was present, but I am not sure of that.

Q. State again as to whether, as to the conversation you had with Mr. Babcock, as to whether or not you were guilty.

A. I told Mr. Babcock that I understood that I was supposed to cooperate—plead guilty—and that was a consequence of the conversation with Mrs. Behrens, but if I plead guilty, I want to cooperate and I am not pleading guilty because I am guilty.

Q. Up to that time had anybody informed you, except Mr. Collard, as to what you were charged with in the indictment? Had anybody—any lawyer—visited you up to that time, except Mr. Collard?

A. No, sir, and even Mr. Collard spoke about a conspiracy. The first time I heard about any charges and what it is called was by Dr. Levin, who is a psychiatrist in the House of Correction, who quoted my charge.

Q. When was that?

A. That was in March last year. Even Judge Moinet, as I came into the courtroom to be arraigned, I heard him say—"This other woman in the spy case"—so I did not know what my charge was.

Q. You didn't know at the time you had this conversation with Mr. Babcock on the 28th of September?

A. I did not.

Q. Well, then, what happened after you had this talk with Mr. Babcock? Did you tell him you would plead guilty?

A. I told Mr. Babcock that I would not plead guilty: that I have to think the whole situation over.

I saw my husband on that occasion. Before I went over to see Mr. Babcock I spoke to Mr. Hanaway what I wanted him to tell Mr. Babcock, and Mr. Hanaway came back in the afternoon and said Mr. Babcock would like to have a talk with Mrs. Leonhardt and myself. Mrs. Leonhardt was with me on that occasion. She went with Mr. Babcock to plead guilty.

Q. Was that the first time you saw your husband since the time you were put in the County Jail?

A. It was the first time, yes, since September the 20th—yes September the 20th.

Q. This was the 28th?

A. That was the 28th, and my husband asked me not to do anything before I see a lawyer.

Q. After your conversation with your husband, what did you tell Mr. Babcock?

A. I told Mr. Babcock that I am not ready to plead guilty. I don't know whether I told Mr. Babcock, but I let Mr. Hanaway know that. He spoke about that—that my husband said he wanted me at least to wait and see a lawyer, because he felt this was not the thing to do.

Q. Well, then, after you told Mr. Babcock that you were not ready to plead guilty, then where were you taken?

A. Back to the Wayne County jail.

Q. That was on the 28th of September?

A. That was right.

Q. And do you recall when it was you did plead guilty?

A. I pled—I changed my plea on the seventh of October.

Q. Now what happened—were you visited by any of the FBI men between the 21st and the 7th of October?

A. Yes, they came in regularly and talked to Mrs. Behrens, and afterwards visited with us, and by the end of the second week Mrs. Behrens pled guilty, and after this she told me—

Mr. Fordell: Wait a minute.

Mr. Kronner: Don't tell, unless the FBI men were there at the time.

A. They were not.

Q. Did she tell you anything that had any bearing on the plea of guilty?

A. Yes, definitely. She said—

The Court: No, no, no, no!

Mr. Kronner: Wait a minute, don't tell what she said. Did you tell any of the agents of the Government?

A. I sent for Mr. Collard and I told him what was on my mind. I asked Mr. Collard if it is true that if I don't fall in line and plead guilty, I and my husband will be involved, and Mr. Collard said he couldn't answer the question.

Q. Did you tell him who told you that?

A. I don't know. I might have said I heard—I am not certain of that, whether I said so-and-so said or whether I said I heard that such and such is the case.

Q. How did you interpret his answer at that time?

A. I asked him some more questions. I said, "Mr. Collard, could you answer whether the investigation of my husband is to be continued, or whether the FBI is satisfied? Mr. Collard said he couldn't answer that question. Then I asked Mr. Collard, "Do you think that in my statement I told the truth?" Mr. Collard said, "Mrs. von Moltke, I know—we know—you told the truth." And I asked Mr. Collard what does the FBI think—is my husband telling the truth? And he said, "Yes we know that he is telling the truth." Later on I talked to Mr. Dunham, and he said they know my husband would tell the truth whether he hurts himself, or me, or anybody else. But as to this question, I felt that there was some proof in it.

Mr. Fordell: I am going to object to how she felt, or any interpretation that is self-serving, or conclusions that she drew. I object to her testimony.

The Court: Objection sustained.

Mr. Kronner: I think it is very important—the state of mind and confusion that existed at that time—and

the great concern that she had—had a great bearing on the decision that she finally made.

The Court: She got her answer.

Mr. Kronner: She got her answer, but the way she interpreted that answer, that is important here, your Honor. I think she should be allowed to tell that.

The Court: Well, I will let her tell it. There cannot be more than one interpretation to a very simple question. All right.

Q. (By Mr. Kronner): When you asked Mr. Collard if it was true that if you did not plead guilty that your husband would be implicated, what was his answer?

A. He could not answer the question.

Q. And how did you interpret his answer?

A. I think if Mr.— I think if Mr.—

Q. Just a minute. Just state how you interpreted it at that time when he gave you that answer.

A. That there was some truth in what I heard.

The Court: What?

The Witness: (Facing Court) That there was some truth in what I heard.

Q. Did that have any bearing on the decision that you finally made?

A. I decided it would be best to plead guilty.

Q. Why.

Mr. Fordell: That is all self-serving.

The Court: Yes, that is enough on that.

Q. Up to the time that you had this conversation with Mr. Collard about whether or not your husband would be implicated, had any attorney been sent you by the Court?

A. No.

Q. Had you received any other advice as to your rights, except from Mr. Collard?

A. No.

Mr. Fordell: Well, how, your Honor, I object to these questions. They are suggestive and leading, and they also contain conclusions.

The Court: I don't recall any advice as to the rights anyone had given her. In other words, you are embodying a question that isn't in the evidence.

Q. Up to the time that you had this conversation with Mr. Collard concerning the implication of your husband if you didn't plead guilty, up to that time did any attorney advise or counsel you in any way as to the charges in the indictment?

A. No.

Q. Do you remember the date of the conversation we referred to?

A. It was between the 28th of September and the 7th of October.

Q. During that conversation you had with Mr. Collard on that occasion, did you then tell him anything more?

A. I told him that—Mr. Collard and Mr. Hanaway came in on the 7th of October, and I told them that I would go with them to plead guilty.

Q. Is that all you said to them?

A. I did not know what to do.

Mr. Fordell: I object to that statement, your Honor. It is self-serving.

The Court: All right—

Q. Did you have any further conversation with him as to whether you would plead guilty or not?

A. I said I wish I would know what the right thing is to do.

Q. Did you tell them that you were upset?

A. They saw that, that I was upset.

Q. Was there any conversation about it between you and the FBI agents?

A. Yes.

Q. Will you tell what it was?

A. They asked me whether I had seen my lawyer, and whether I had thought about what I was going to do.

Q. Who asked you that?

A. Mr. Hanaway and Mr. Collard. And I said, "I wish I would know whether that is the right thing, if I go and plead guilty." And it was said—I don't know who said this, either Mr. Collard or Mr. Hanaway—"At least it might be the wisest thing."

Q. You say that they knew that you were upset. Did they say so in so many words to you?

A. Well, I was crying, sir.

Q. Pardon?

A. I was crying, and very nervous.

Q. In their-presence?

A. Yes.

Q. And you were asking them on that occasion what you should do?

A. Well, it was not that I said "Mr. Collard" or "Mr. Hanaway, what shall I do?" It was a question if one is troubled and confused and desperate—it was more an expression, and then it was said, "Well, it might be the wisest thing," and I decided that it would be the wisest thing to go there and plead guilty.

Q. Do you remember who told you it would be the wisest thing—which Government agent told you it would be the wise thing to plead guilty?

A. I don't remember.

Q. Do you remember which agents were visiting you?

A. Yes.

Q. Who were they?

A. Mr. Collard and Mr. Hanaway.

Q. And it could have been either Mr. Collard or Mr. Hanaway?

A. It could have been either Mr. Collard or Mr. Hanaway.

Q. Did you ever, at any time during that period in your discussions about whether or not you should plead guilty or not guilty, state whether you were innocent, to the agents of the FBI?

A. Oh, yes. I talked to Mr. Collard about that. I said since Mr. Collard has taken by statement he knew I was not guilty, and he knew I never in my life lived in Grosse Pointe—one of the so-called "Over" Acts of which I and Mrs. Leonhardt was accused. I pled with Mr. Collard to do something about it, and that was where—Mr. Collard then explained . . . that this is taken care of by the Probation Department.

Q. When you refer to—when you just referred a minute ago that you were never in Grosse Pointe, what were you referring to?

A. There wasn't an "over" Act. It stated just that Miss Buchanan Dineen and I have been on such and such a street in Grosse Pointe.

Q. Was that in the indictment?

A. Yes, and I never have been Grosse Pointe, and Mr. Collard knows that.

Q. Who told him?

A. Mr. Collard knows from the statement that I never had been in Grosse Pointe.

Q. Then it was here Mr. Collard or Mr. Hanaway—it was it—they said that the wise thing to do was to plead guilty?

A. It might be the wisest thing.

Q. It might be?

A. Yes.

Q. And approximately when was that conversation?

A. While I was ready to get dressed and go; the gentlemen had called for me.

Q. Was this one of their regular calls?

A. No. After the September 28, I had said I want to think it over whether I am going to plead guilty, and Mr. Collard came in just to see how I felt about it, and whether I had seen a lawyer, because I said I wouldn't decide before I had seen a lawyer.

Q. And had you seen a lawyer?

A. I had not.

Q. All right, then tell what happened?

A. I talked to Mr. Babcock again and told him that I was ready to plead guilty, and I said again that I was doing it as I had explained on my visit before, because I still felt I was not guilty, and Mr. Babcock said that Judge Moinet was not in the house—would I mind changing my plea in front of Judge Lederle, and there a trial was going on of the Jehovah Witnesses, but it wouldn't take long, and since I was in the building, and wanted to get over with it, I said, "Yes, I will do so." So Mr. Collard came along to Judge Lederle's court, and Mr. Babcock, and we had to wait a moment until the court procedure was interrupted.

Q. State what the condition was you saw in the courtroom?

A. It was a crowded courtroom with the Jehovah Witnesses, and a crowded courtroom—

The Court (interposing): I take judicial notice that a Jehovah Witness trial always has a large crowd. (Laughter.)

Q. (By Mr. Kronner): Who accompanied you to Judge Lederle's court on that occasion?

A. Well, Mr. Collard, and Mr. Hanaway, and Md. Dunham was in the courtroom, and I believe Mr. Kirby was there, and several members of the FBI were in the courtroom.

Q. Were any of them near you when you went into the courtroom and when you went before the judge?

A. To my right stood Mr. Babcock and to my left stood Mr. Collard.

Q. And where were the other agents?

A. They was standing at the end of the bench to the—close to the wall.

Q. Facing you?

A. Yes, I could see the gentlemen.

Q. Now, then, tell what happened when the Jehovah Witness case was interrupted, and what occurred from there—from that time on.

A. I went in front of Judge Lederle, and Mr. Babcock handed the judge what I would call a folder, and Judge Lederle looked into that and said he could not accept the change of plead because there was something about an attorney—either I did not understand what he said—but I understood that he said there was to be appointed an attorney in this case, or there was appointed an attorney in this case, or there was to be present an attorney—but I knew distinctly the judge said he could not accept the change of the plead, and Mr. Babcock explained to him that this was different, and that he could accept the change of the plead, and I was handed a note, and it was said, to my knowledge and my recollection, it was said I was supposed to appear for trial in court, and that was what I didn't want at all, so I called Mr. Babcock's attention to that.

Q. Pardon me. When you say there was a paper handed to you, who handed it to you?

A. I don't know sir. I was so confused in the midst of the Jehovah Witnesses that I can't recall who handed the paper or what was said distinctly.

Q. Up to that time, had the judge talked to you, or had all the conversation between the judge and anybody been between him and Mr. Babcock?

A. And Mr. Babcock, yes.

Q. There was handed you a slip of paper?

A. Yes.

Q. And to the best of your recollection, did you read that paper?

A. I tried to read it.

Q. To the best of your recollection, do you know what was on that paper?

A. It said something about—to my recollection—that I was to appear for trial whenever I was wanted, and I called Mr. Babcock's attention to that and said I wouldn't sign this note because I did not want a trial. Mr. Babcock said this is all right; I could sign it; and I signed the slip.

Q. Was that, to the best of your recollection, the entire conversation between you and anybody in the courtroom that day about this paper that you signed?

A. Yes, sir.

Q. Then what hapuened after you signed that paper?

A. Well, Judge Lederle spoke to me and he said—I can remember that he said, "Has the indictment been explained to you?"

Q. All right. He asked you that question?

A. Yes.

Q. And had the indictment been explained to you?

A. Well, Mr. Collard told me—

The Court (interposing): Another question is what did she reply?

Mr. Kronner: All right. I was leading up to that point.

The Court: Let's get that, because the judge can only act upon what is told him about it. He asked you if the indictment had been explained to you, is that right?

The Witness: Yes, your Honor.

The Court: What did you say?

The Witness: I said, "Yes."

Q. (By Mr. Kronner): Now, then, I ask you, had it been explained to you?

A. No, it had not been fully explained to me.

The Court: Well, you read it, didn't you? You seemed to remember about various paragraphs that cover the Overt Acts, and described them as "Over" Acts. You had read it, had you not?

The Witness: I had, your Honor.

The Court: All right.

Q. (By Mr. Kronner): Was there any further conversation between you and the Court?

A. Judge Lederle said, "And you plead guilty because you feel you are guilty?" And I said, "Yes."

Q. At the time that you gave that answer, was it true that you were pleading guilty because you knew you were guilty?

A. It was not, because I pled guilty to cooperate.

Q. At the time that you were pleading guilty, did you even know what you were pleading guilty to?

A. No, I did not, because Mr. Collard explained to me that the "Over" Acts in the Indictment do not mean the real thing.

Q. From your reading of the so-called Overt Act, would you know from a reading of them what you were charged with?

Mr. Fordell: I object to these questions, your Honor, because they call for self-serving answers.

The Court: Well, in that form it is objectionable.

Mr. Kronner: Your Honor, please—

The Court: Don't argue about it. Instead of asking would she know, ask her did she know. That question is all right.

Q. (By Mr. Kronner): Did you know, Mrs. von Moltke, what the charges against you were, from a reading of the indictment?

A. You mean what the accusation was?

Q. Yes.

A. I knew I never had been in Grosse Pointe.

Mr. Fordell: That is not responsive to the question.

The Court: When you refer to that fact—you knew you were not in Grosse Pointe,—why did you say that, why did you give that answer?

The Witness: Because what I read in the accusations, I felt I was not guilty of it, and I talked this over with Mr. Collard, because Mr. Collard took my statement, and he knew that I had told the truth and that I was not guilty of the "Over" Acts.

Q. (By Mr. Kronner): At that time how did you pronounce Overt Acts?

A. Overt Acts.

Q. Overt Acts?

The Court: Her pronunciation is very good! In fact the indictment so labels it—"Overt Acts"—set out in—

Q. (By Mr. Kronner): How do you spell Overt Acts?

A. (Pronouncing): "Over" and "Acts".

The Court: You are pretty near right—five letters and one wrong—"t"—that's a good percentage. Go ahead.

Q. (By Mr. Kronner): At that time, Mrs. von Moltke, that is, the time that—leading up to October 7th or 8th, when you appeared before Judge Lederle, tell the Court whether you had, at that time, back in 1943, a good knowledge of the English language.

(Mr. Fordell rises as if to object.)

The Court: She may answer.

The Witness: I think that Mr. Collard and Mr. Hanaway—

The Court (interposing): No, no. Answer the question.

The Witness: I believe that I had a hard time to understand—

Mr. Fordell: I object.

The Court: That answer may be stricken. The question is: Did you have a good knowledge of the English language at that time?

The Witness: No.

Q. (By Mr. Kronner): Well, will you tell the Court how limited your knowledge of English was at that time? Explain that fully to the Court.

A. Would you repeat the question so I can understand what—

Q. Will you explain to the Court how restricted, or limited, your knowledge of English—of the English language—was at that time, that is, between August 24, 1943, and October 7, 1943?

A. I had not enough practice in English, because at home we spoke only German, and I gained my knowledge from reading, on the radio, and I thought I could carry on a conversation. Of course, I have a vocabulary which is misleading; there are things to which I am bound to attach a wrong meaning. For instance, we had once a discussion, and I made the statement that the Probation Department is a mercenary agency. Six months later I found out what I meant it was an agency of mercy, and that a mercenary agency is quite a different thing.

Q. Can you think of any other words you did not know the meaning of, that were important at that time?

Mr. Fordell: Your Honor, object to that question. It is going too far, to pick out some word in her vocabulary that she didn't—in the English language—that she couldn't understand. It is too remote. I don't know what it proves.

The Court: You mean there are a lot of words in the English language you and I don't understand.

Mr. Fordell: That is true.

The Court: Did you know any English before you came to this country?

The Witness: No, your Honor.

The Court: You came here in 1930?

The Witness: No, in 1927.

The Court: So you had been here sixteen years at that time?

The Witness: Yes, your Honor.

The Court: I see.

Q. (By Mr. Kronner): Were there any words in the indictment, or any words in any of the statements that you gave the agents of the Government, that were misunderstood by you?

A. There might have been quite a number of words, because I am in the habit—

The Court: One moment! You may not speculate if you don't know what they were.

Q. (By Mr. Kronner): Can you recall any discussion that you had with any of the agents, as to words that you did not understand?

A. Well, the very word "agent" in our conversation was misleading to me; as to the German way it is pronounced "a-gent" (pronouncing the "g" as in "go"), and it gets a character from the noun attached to it; you know what I mean—"agent" doesn't mean anything, but a man who sells insurance is an insurance agent; a man who works as a social worker is a welfare agent, and a man who is called in American a producer, is a theatrical agent, so that is one word very misleading to me.

Q. Did you have any discussion with any of the Government agents as to your misunderstanding of the word "agent"?

A. I had, with Mr. Collard in Mr. Lehr's office on March 17, it was, and before with Mr. Hanaway in Wayne County Jail.

Q. Will you tell what that discussion was?

A. It is in my statement, and it is said—it was taken down as I had said that between November 1st and December 20. Mrs. Behrens told me that Grace Buchanan Dineen was an agent for the Axis Power, and this particular agent came up in one conversation when Mr. Dunham and Mr. Hanaway were in Wayne County Jail. Then I ask Mr.—I knew then that I did not, I had not understood fully the meaning to the word, and I talked about it to Mr. Collard, and Mr. Collard knew that I had a very hard time with rephrasing my statement; it took a lot of patience to get the thought I want to express; I am still in the habit of thinking in German and translating into the English. This is what makes it difficult, though in thirty-one months incarceration I had considerable time to improve my English and learn a great deal about the language.

Q. That is since your plea of guilty, is that right?

A. That is since my plea of guilty.

Q. During this discussion you had about this word "agent" in connection with Mrs. Dineen, did you have a conversation with Mr. Lehr?

A. In Mr. Lehr's office, with Mr. Collard.

Q. Had you had a conversation with any of the FBI men before that?

A. It seems to me it was in October, with Mr. Dunham and Mr. Hanaway, as Mr. Hanaway was the last time in Wayne County Jail.

Q. Did you try to explain to them that you did not understand the meaning of that phrase, that you knew that Mrs. Dineen was an agent?

A. Yes.

Mr. Fordell: Just a minute. Is this after the plea of guilty had been entered?

Mr. Kronner: No, this is before and after, as showing that she did not have—there were many words like “conspiracy,” “agent,”—

Mr. Fordell: I meant to ask, did she talk to Mr. Lehr before she entered a plea of guilty?

The Witness: No.

Mr. Fordell: Then the testimony she is giving as to what she told Mr. Lehr was subsequent to the time of the plea of guilty?

Mr. Kronner: That's right.

Mr. Fordell: I object to it.

The Court: It couldn't affect the plea.

Mr. Kronner: It couldn't affect the plea, but she had this conversation first with the FBI agent.

The Court: She testified to that.

Mr. Kronner: It is just to bring out that she didn't understand the meaning of that word, which was very important, and had she had the assistance of counsel to advise her, she probably wouldn't have changed her plea.

Q. (By Mr. Kronner): Well, then, tell further what happened in Judge Lederle's courtroom?

A. Judge Lederle accepted the plea, and said that he saw this in the newspaper . . . that I would be referred to the Probation Department. I was then taken to the Wayne County Jail.

Q. Did you have any further conversation with the agents of the FBI after your appearance before Judge Lederle?

A. Yes. They came regularly to visit us.

Q. Did you have a conversation shortly after your

plea of guilty before Judge Lederle, with any of the FBI agents?

A. Yes. I said even then, the right thing—I should not have pled guilty.

Q. To whom did you say that?

A. Mr. Dunham and Mr. Kirby.

Q. Did you tell them why you had done the wrong thing in pleading guilty?

A. Yes. Because I am not guilty.

Q. Did you tell them that you wanted to change your plea?

A. I did not know, sir, that this was permissible.

Q. Did you ever learn that it was permissible?

A. Around Christmas I learned that this was permissible.

Q. What else did you learn around Christmas?

Mr. Fordell: I object to that question. She might have learned a lot of other things which have nothing to do with this case.

Mr. Kronner: It has a lot to do with this case.

The Court: All right. What was the question?

The Court: —in connection with your plea of guilty?

The Witness: I learned that in the United States, under the Constitution, as a defendant you do not have to prove yourself innocent as in the European countries; that it is the task of the prosecuting attorney to prove you guilty. I learned farther that after you have pled guilty you never can appeal your case, and I understood first that if I would plead guilty and I would be sentenced, that I would have the right, if I would have the money, to appeal the case, but I learned then that this was not so.

Q. From whom did you learn that?

A. Mr. Okrent.

Q. When was it you found that out?

A. Shortly after Christmas.

Q. Had you known that when you appeared before Judge Lederle, would you have pled guilty?

Mr. Fordell: Just a minute. I object. That is absolutely self-serving.

The Court: Objection sustained.

Mr. Kronner: Your Honor, please, I think we have a right to this. It goes to the very heart of this proceeding, your Honor, to find out what was the state of her mind as a result of not having counsel.

The Court: Yes, she may confirm the condition of her mind and what influenced her. Proceed along that line.

Mr. Kronner: Your Honor, I am now asking her, if she had known prior to the time she entered her plea of guilty, that there was this presumption of innocence, had she been informed of that, would she have pled guilty?

Mr. Fordell: Your Honor, that wouldn't have any bearing on the issue—the mere fact that she found out later that it might have been tough for the Government to prove the case doesn't establish that she didn't enter her plea intelligently. The only issue is: Did she know she was pleading guilty? If she did, and did it understandingly, intelligently, and voluntarily, without any promises of any kind, or threats, then I believe the plea would have to stand, even though she might have found out later that it would be tough for the Government to prove the case, and had she known that, she wouldn't have pled guilty.

Mr. Kronner: Your Honor, please, it is all so necessary a question in this case as to whether or not she was informed and had knowledge of her rights.

The Court: Before she pled?

Mr. Kronner: Before she pled. And it is necessary that she had the capacity to understand what her rights were.

The Court: Is there any testimony that she was informed that she had to prove her innocence?

Mr. Kronner: Yes, your Honor.

The Court: None whatever.

Mr. Kronner: I think the testimony, your Honor, the conversation at the time—

The Court (interposing): The only testimony to that effect is her testimony a moment ago on how, but no evidence of anyone connected with this case, that said she would have to prove her innocence.

Did any government official tell you you had to prove your innocence?

The Witness: No.

Q. (By Mr. Kronner): Mrs. von Moltke, do you recall the occasion when Mr. Collard read over the indictment to you?

A. Yes.

Q. You sent for him?

A. I did.

Q. And asked him to explain it to you?

A. Yes.

Q. Now, then, tell what advice he gave you at that time.

Mr. Fordell: I object to it.

The Court: Objection^s sustained.

Q. (By Mr. Kronner): Did he give you any advice at that time?

A. Yes. Mr. Collard tried to make me understand—

Mr. Fordell (interposing): I object to that answer, your Honor.

Mr. Kronner: If the Court please, she hasn't finished her answer.

The Court: Go ahead.

The Witness: After I thought I understood what Mr. Collard said by explaining the Rum Runners case, I said, "Then I have no chance to prove myself innocent?"

Q. (By Mr. Kronner): And what did he say?

A. Mr. Kronner didn't say anything. Then I said, "How will any judge know how to judge me like that, if one is innocent, and if the law is such and such?" And Mr. Collard told me about the Probation Department.

Q. (By Mr. Kronner): Will you tell the conversation between Mr. Collard and you on the occasion when he went over and read the indictment to you; tell everything you heard that was said.

A. I read the indictment, and I took it to the office. I told Mr. Collard, I said, "Say, Mr. Collard, you know I have nothing to do with all the people named here." And then he pointed out what he called the "Over" Acts, and I said, "You know from my statement I am not guilty of all this."

The Court: —not guilty of all this?

The Witness: Yes.

The Court: But you were guilty of some of the Overt Acts, weren't you?

The Witness: No, your Honor.

The Court: I just glanced over here—Act 24, you are mentioned in it, and I saw one or two other places where you are mentioned. I never read this indictment before, but I know at least two places—24, 32—

Mr. Fordell: 29, 30—

The Court: Yes, I know there are a number in which you are mentioned. Did you notice you were mentioned in several of these Overt Acts charged?

The Witness: Yes.

The Court: All right, because you just referred specifically to one which describes something that occurred in Grosse Pointe; you said you weren't there; but there were quite a number of other Overt Acts charged in which your name was mentioned—that is true, isn't it?

The Witness: That my name was listed. But I am not guilty of it, and this is what I talked to Mr. Collard about, because, I said, "You have taken my statement, and you know it is not so." And then Mr. Collard explained that the indictment in this connection doesn't mean much of anything, and that the point Mr. Collard brought out was in sequence of a conversation which was among the women who after Miss Behrens had seen Mr. Babcock. For this very reason I wanted to see Mr. Collard and ask him questions, and Mr. Collard then explained; and I couldn't understand anything because I knew I was not guilty, and I told him so, and he said, "Nevertheless—" and explained with the "Rum Running" examination.

Mr. Kronner: For example, Mrs. von Motke, I will read you one of the claimed Overt Acts.

The Court: What are you reading?

Mr. Kronner: 29—page 10.

The Court: Yes.

Mr. Kronner (reading): "... Marianna von Moltke introduced Edward Abt to Grace Buchanan-Deneen."

Q. Were you there on that occasion?

A. I was in the house on this occasion, but I did not introduced Mr. Abt to Miss Buchanan Deneen.

Mr. Kronner (reading): "... Marianna von Moltke met and conferred with Grace Deneen."

Q. Did you know anything about any conspiracy?

A. I did not.

Q. Did you understand that merely meeting a person, and talking to them, whether that was lawful or unlawful?

Mr. Fordell: I object to that, your Honor. That is self-serving.

Mr. Kronner: If the Court please, many statements that the witness makes are self-serving, but she must serve herself with what she knows about the charges—or capacity to react to them, and I don't think self-serving statements should necessarily be excluded.

The Court: It isn't necessary to exclude it. In fact, there have been innumerable statements of that character admitted. She may answer.

Q. (By Mr. Kronner): Did you understand from reading this Overt Act that the fact that you talked to Mrs. Deneen at your house, there was anything unlawful about that?

Mr. Fordell: I object to that, your Honor.

The Court: That isn't a statement of what the facts are. Mere talking is nothing unlawful, but the conferring or meeting with the object of conspiracy, that is unlawful. They might talk for twenty-four hours—innocent conversation—so your statement isn't right.

Mr. Kronner: Your Honor, she just testified, she said she never knew of any conspiracy.

The Court: Her statement isn't a direct statement. You are leading her on. This casual meeting or talking may be unlawful. It may be, but it depends upon the circumstances behind the character of the meeting.

Q. (By Mr. Kronner) Now, then, Mrs. von Moltke, how did Mr. Collard explain to you as to the nature of these charges? Did he attempt to explain just what these charges did mean?

A. No. Mr. Collard said that those charges don't mean a thing, and then he explained to make me see the

Rum Runners' case. I told him, "Mr. Collard, you know I never introduced Mr. Abt to Mrs. Dennen." Then he explained the Rum Runners' case, and it gave me the idea that if such is the law in the United States, you can't do anything about it.

Q. Just to make clear, what did he explain to you about the Rum Runners?

The Court: I think she told that. I remember, and I am the only one who really should remember.

Q. (By Mr. Kronner) From that, did you understand that you had to prove your innocence?

A. Yes.

Mr. Fordell: Just a minute! I object to that as suggestive and leading. It gives just the answer he expects the witness to give.

The Court: Certainly it does, but as I said—

Q. (By Mr. Kronner) When was it that you first found out that a person accused of crime is presumed to be innocent?

The Court: That has been answered before.

Mr. Kronner: All right.

Q. (By Mr. Kronner) And had you known that before you pled guilty, would you have plead guilty?

Mr. Fordell: I object to that, your Honor. There is no way of meeting this testimony. It is all something objective in her mind. She doesn't accuse anybody, she doesn't accuse any of the agents—she is testifying to what was in her own mind.

Mr. Kronner: She has a right to testify, your Honor, as to the result of her demanding the assistance of counsel.

The Court: All right. The answer is obvious. (To stenographer): You got the question?

(Whereupon the last question was read by the reporter.)

A. I first found that out on January—Monday, January 17, from Mr. Dunham. Mr. Dunham came up and we had a conversation on that. Mr. Dunham said it is true that in the United States, under the Constitution, nobody is guilty until he has been proven guilty. That

was the first time that I talked to Mr. Dunham about it. I asked again for Mr. Collard, to inform me whether this is my right; whether people who plead guilty are permitted in America to withdraw their plea. This was on January 6. After this we had several conversations. Mr. Dunham, on January 17, answered my question by saying that under the American Constitution nobody is guilty until he has been proven guilty.

Q. Can you tell any other things that happened—any other conversations between you and the FBI, or any other Government agents, that influenced you, or caused you to plead guilty when you knew you were innocent?

A. Well, during the time between the 23rd, I might say, and the 28th, there were many discussions between Mrs. Behrens and the gentlemen from the FBI, and many things were said in the conversation.

Mr. Fordell: To whom? I would like to know to whom, who made the statements—to whom were the statements made, and when?

The Witness: There were no statements made. I am talking about discussions and conversations.

The Court: Nevertheless, we want to know who was doing the discussing—who was present?

The Witness: In this discussion was probably Mr. Dunham, Mr. Kirby, and Mrs. Leonhardt, and Mrs. Behrens and I, and we were discussing things, and the answers had the effect which were given.

Mr. Fordell: I object to her testimony of what the effect of the answers were.

The Court: There must be some possibilities of controverting testimony when you are talking to a large party; you can't say who talked, particularly when the witness is testifying not to facts, but her impressions and conclusions. It is clearly permissible.

Q. (By Mr. Kronner) Mrs. von Moltke, you are now relying on conversations, as I understand it, or discussions, that took place between you, Mr. Dunham, and Mr. Kirby, and in the presence of Mrs. Leonhardt and—

A. Mrs. Behrens.

Q. Behrens? Will you tell whether anything was said

by you to the FBI agents, and to those there? What was said on that occasion?

A. We were discussing the fact that—

The Court: (Interposing) Now, first say to whom who said the discussion that was had.

The Witness: Mrs. Behrens said—

The Court: To whom?

The Witness: To Mr. Dunham, Mr. Kirby, Mrs. Leonhardt, and myself. She said, for instance, there is a statement in case, and we had a discussion on that.

The Court: Well, that is not very illuminating.

The Witness: And it was said of everything pertaining to the case—the gentlemen were visiting us, and—

Mr. Kronner: Well, tell what they said, or what was said in the presence of these men, in your presence, that caused you to plead guilty when you knew you were not guilty.

The Witness: The expense of the trial, the term of probation, and the—

The Court: Now, did any of the agents, or did you, or did the other alleged conspirators say it? If the agent said it, who was it?

The Witness: Yes, in a discussion.

The Court: All right. Who was it?

The Witness: Well, for instance, if Mrs. Behrens—

The Court: Not for instance. Who said it, of the agents?

The Witness: Mrs. Behrens would say—

The Court: I am not interested in what she said.

Mr. Kronner: Who was there when she said it?

The Court: I am not interested in that. I am interested in what the agents said that influenced the petition.

The Witness: Could you please repeat the question?

Mr. Kronner: State what occurred.

The Court: My question—we might have the reporter read it. (Before reporter spots desired question, the Court continues): All right. Let it go. Put it this way—I will explain: What you said, or what the other woman said, isn't at this moment of any importance. What counsel is endeavoring to do is to show that you were unduly or improperly instructed by something that the agent of the

FBI said. Now that is what I want to know: What did any of these agents of the FBI say at that time you said you had this discussion?

The Witness: Well, your Honor, may I explain?

The Court: Isn't that a simple question?

The Witness: Yes, but I want to say what is the truth. You know, I am here to tell the truth. You have a conversation; somebody makes a remark; and you take the essence of the thought.

The Court: Yes, that is all very true, and that may have been the exact condition, but when you are charging, as you are at this time, that the agents of the FBI influenced you by their actions, by their words, to do a certain thing, you must tell what they did, what they said, and who they were. In other words, the law gives a person a chance to refute things that are said. If you speak generally, without any specific thing said, without a name mentioned, if it be not true, how can anyone refute it? You see the reason for it?

The Witness: I do.

The Court: All right, then, bear that in mind and try to answer the question.

(Silence.)

Mr. Kronner: Will you go ahead and answer?

The Witness: Yes, if you start the question.

The Court: If you what?!

Mr. Kronner: Repeat the question.

The Court (to stenographer): Read the question.

(Whereupon the Court's last question was read by the reporter.)

The Court: Do you understand that, Mrs. von Moltke? (Silence.) She told me she did. Can you explain it more definitely, or better?

Mr. Kronner: No, but she seems to be confused.

The Court: All right. I was endeavoring to give the witness a reason why certain things had to be done in a certain way. Whether they percolate or not, the question is: What did these agents of the FBI say or do that influenced your judgment. When did they say it, and who said it?

The Witness: I am trying to frame an answer to that comprehensively.

The Court: Beg pardon?

The Witness: I am trying to give an answer to that.

The Court: You tried?

The Witness: No, I am trying to.

The Court: All right.

The Witness: After Mrs. Behrens saw Mr. Babcock and Mr. Lehr, she would come back and tell certain things. In the discussion then, if the agents came, we would strike the same thing and discuss that, and the answers which were given then in the discussion I took as being told what is what. Now, for instance, if Mrs. Behrens came and said that Mr. Babcock had said that—

The Court: One moment. Was it what this other woman said that someone else said that influenced you?

The Witness: Well, no, your Honor.

The Court: That is what you are repeating now.

The Witness: Yes, but the—we would ask in the discussion—may I explain that?

The Court: I am hopefully waiting for the explanation.

Mr. Kronner: I believe, your Honor, if I may interrupt, I believe she is trying to tell you that Mrs. Behrens would return from—

The Court: I understand that clearly.

Mr. Kronner: All right. Then Mrs. Behrens made a statement that was purported to have been made by Mr. Lehr.

The Court: I understand that. I think I understand her quite as well as you do.

Mr. Kronner: And now she is trying to say that she asked the FBI to explain—

The Court: And I am asking her what she asked them, what they said, who said it, and when they said it?

The Witness: Then I would say, "Is it really so bad, that the public is so hostile?"

The Court: To whom?

The Witness: Mr. Dunham. "... if we go to Court, will we be bodily attacked?" Mr. Dunham would say, "it is war time—you have to bear that in mind. Public sen-

timent grows from war hysteria. You don't need to be afraid; you will be protected.".

The Court: That you will be protected?

The Witness: That I will be protected by the FBI. But they left me with the thought that it is terrible to go to court and face a hostile public.

The Court: It is always terrible to go to court. We will adjourn now. We will have an evening session; be back at seven o'clock.

(At 4:40 P.M. an adjournment was taken until 7:00 P.M. the same day.)

(Court met pursuant to recess.)

Direct Examination (Continued)

By Mr. Kronner:

Q. Mrs. von Moltke, I believe that you were last discussing that you had a conversation with the members of the FBI when they said they would protect you. Do you remember that?

A. Yes.

Q. And do you remember what the names of the FBI were with whom you had this discussion?

A. Well, those men who were there, Mr. Kronner; it was such a long time ago that I cannot very well remember the names exactly, and at this time I was so confused and even though—

The Court: Well, that is the answer, that she does not remember.

Q. Do you remember any specific occasion when you were in the County Jail that you discussed or had a discussion with the FBI men concerning any protection that they would give you?

A. Well, that was on the occasion where we discussed the court procedure with all the publicity and all the newspapers that would come to the court and all that, would see the people involved, and this was more or less a spectacle to the public, and that the public was very

hostile, it was to be understood in wartime, and the case itself would receive so much publicity.

Q. All right. Now, where did that discussion take place

A. In the cell block, 602, in the Wayne County jail.

Q. To the best of your recollection who was there when that discussion took place?

A. Probably Mr. Dunham and Mr. Kirby.

Q. And can you recall what either Mr. Dunham or Mr. Kirby said about the public being hostile?

A. No, I cannot recall any quotation on that.

Q. Well, in substance, to the best of your recollection?

A. In the substance that the public was naturally hostile to people like that since there was a war on and the public sentiment was very high on that, and that naturally we would have to face, if we got on trial, we would have to face a hostile public.

Q. Did anyone of the FBI men tell you whether they would protect you or not?

A. Mr. Dunham said that he would protect me. It was more he—what would you say? That I would say well then if they were attacking me and Mr. Dunham would say "You do not need to be afraid of that, because we will protect you,—Bert Collard, he and I get in the back, and suggest a way."

Mr. Collard was not there then. Mr. Collard had been there several times. This conversation took place between the 23rd and the 28th, when we had all those conversations. There had been no conversation between me and the FBI agents concerning the non-appearance of the promised attorney.

Q. Did the FBI, any of the FBI men who visited you there during that period, did they ever make any remarks as to whether the attorney had visited you or not?

A. They asked me whether I had seen my attorney.

Q. And what did you tell them?

A. No.

Q. And did they make any comment about that?

A. No, the FBI men did not make any comment.

Q. Was there any discussion during that time be-

tween you and the FBI, or any remarks by the FBI as to whether the other defendants in that case were pleading guilty?

A. Yes, there was.

Q. Will you state what that conversation was?

A. Mr. Kirby had a conversation with Mrs. Behrens.

Q. In your presence?

A. Yes, where he said that he had been in Milan and that next week the people would plead guilty. That was what I understood from the conversation between Mr. Kirby and Mrs. Behrens.

Q. Do you remember when that conversation occurred?

A. It was after Mrs. Behrens pled guilty in this time. I believe it was. It was between the 28th and the 7th of October.

Q. Did you have any discussion about that with Mr. Kirby?

A. I asked Mr. Kirby once if all the people would plead guilty, and I not, would I get a trial for myself.

Q. And what did he reply?

A. Mr. Kirby said that he could not answer this question because he did not know if this would be all right with the prosecuting attorney.

Q. Did he tell you that you should get an attorney to advise you on that?

A. No, Mr. Kirby did not tell me such a thing.

Q. Whenever you asked any FBI men who visited you there during that period between the 21st of September, and the 7th of October, whenever you asked any of them for any advice did any of them at any time tell you that you should get your advice from an attorney?

A. No, they did not.

Q. When you read the indictment, and it referred to overt acts, did you understand what was meant by "Overt Acts"?

A. I did not.

Q. Do you know what "overt" means?

A. I do not.

Q. Up to this moment do you know?

A. Up to this moment I do not. I am not familiar in any way or form with the legal terminology.

Q. On the second page of the indictment there is language to the effect that to violate Section 32 of Title 50 USC,—do you know what “USC” mean?

A. No, sir.

Mr. Fordell: Well, just a minute. I object. I do not think it is proper testimony.

The Court: It is not. I do not suppose there are two people in the room who would know, including counsel. It is a citation from the Code, but obviously she would not know.

Mr. Kronner: Well, your Honor, it is claimed that she violates USC, Section so and so, I think it is—

The Court: When they are explaining to a defendant in court here, they give the substance of the crime charged. They do not cite the number and the subdivision, because it would be nothing to them, unless they had memorized the entire United States Code, which I do not think anybody has. Lawyers have not. Do not ask obvious questions like that. Of course she did not know. I dare say if you read it for the first time you would not know, and you probably do not know now.

Mr. Kronner: I know it, because I looked it up, your Honor, but I would not have known it if I had read it—

The Court: That is the reason. Go ahead.

Q. (By Mr. Kronner): Earlier in your testimony today, Mrs. von Moltke, you testified as to a conversation between you and Mr. Collard as to whether or not you knew that Mrs. Deneen was an agent of the Axis Powers. Do you remember that?

A. I do.

Q. And I believe you stated that you did not know at that time the meaning of the word “agent”. Is that right?

A. Not in the combination it has the value or character concerning the case.

Q. Did you ever know whether Mrs. Deneen was an agent of the Axis Powers?

A. I did not.

Mr. Fordell: Just a minute. I object to that. It is not material to the issue here.

The Court: The objection is sustained.

Q. (By Mr. Kronner): Did you ever have a conversation with Mr. Collard about that?

Mr. Fordell: I object to it, as it is not material in this case.

The Court: The objection is sustained.

Q. From the time that you were handed the indictment to the time that you pled guilty on October 7, did you know the meaning of the word "conspiracy"?

A. I did not.

Q. Did you know the difference between conspiring and confederating?

A. I did not.

Mr. Fordell: Your Honor, I still say that this testimony is not material to the issue in this case, and I object to it, your Honor.

The Court: I will let that stand. What do you call a conspirator in German?

Mr. Kronner: The judge is addressing you.

The Court: What do you call a conspirator in German?

A. I don't know, your Honor.

The Court: What do you call a conspirator in German?

A. I would not say so, your Honor; but I don't know what you would call them.

The Court: Plotter; have you ever heard that word, plotter?

A. No.

Q. Do you know what a plot is?

A. How do you spell that, your Honor?

The Court: P-l-o-t. Plot.

A. Oh, a plotter. No, there is no German word either.

Q. Do no German plays have plots?

A. Yes, but they do not call it a plot.

The Court: What do they call it?

A. I could not—I cannot remember.

Q. Conspiracy is not a new word, you know; even the Greeks have a word for it.

Q. (By Mr. Kronner): Did you know what a grand jury was at that time?

A. I did not.

Mr. Fordell: I still object to this testimony.

The Court: Objection sustained.

Q. You testified at the hearing before the Enemy Alien Board, I believe, on the first of September, was it, at 10 o'clock? Was that 10 o'clock in the morning, or 10 o'clock at night?

A. It was 10 o'clock at night.

Mr. Fordell: I object to this testimony as it is not material to the issue as to what time she testified.

The Court: It certainly is not.

Q. On the occasion when Mr. Okrent and Mr. Berger visited you on the 25th of September, at the County Jail, what was the substance of your conversation?

A. The substance of our conversation was between myself and Mr. Okrent about my family, about my husband and my child especially.

Q. Did you discuss the case?

A. I did not.

Q. Did they advise you as to your rights in any way?

A. They did not.

Mr. Fordell: We have gone over this once before.

The Court: I think we have.

Q. (By Mr. Kronner): You have testified that up to the time of your arrest on the 24th of August, 1943, that you were a housewife and a mother.

A. I was.

Q. Would you kindly tell what your duties, and what you did as such?

Mr. Fordell: I object to it. It certainly is not material in this case as to what she did as a housewife, if she washed dishes, or clothes, or had a maid, on one day, or played golf. I certainly think it is far away from the issue in this case.

The Court: Yes, it is. We ordinarily know what the accepted duties of a housewife are. I assume you want to show some exceptional circumstances, do you?

Mr. Kronner: Your Honor please, I presume I was trying to show, first of all I might state this, that one of the important factors in the determination of a person's—of the effect of the denial of counsel and as to

whether a person had the capacity and the understanding to waive counsel, to make an intelligent choice, one of the important factors in the determination of that is their background, their past life, and what I am attempting to show is the kind of a life, restricted life,—I don't know what it is yet—that she lived up to the time of her arrest, and then this sudden unexpected transition into an entirely different thing and the effect that that had on a person who had lived that kind of a life before, and the effect particularly that she was not—

The Court (interposing): Well, all right. Your theory is all right, but do not go into unnecessary details. She was a housewife. Now we all know what the ordinary duties of a housewife were. If she had no other activities, no other avocation, no social life, no cultural life, bring those things out. We do not care whether she washed dishes, or scrubbed the floor, or did anything else like an ordinary housewife would do. It is like asking a bus driver what he does.

Q. (By Mr. Kronner): Mrs. von Moltke, will you state what activities, if any, that you had outside of your home, social activities, if any.

A. I was a member of the Red Cross, and I was a member of the PTA, the Parent Teachers Association. And I was honorary social worker, voluntary social work, with the International Center, YWCA.

Q. Were you very active in that work, in that social work?

A. Not very, because I had a sick child I had to attend to mainly.

Q. And that was the extent of your social activities or your activities outside of your home?

A. Yes, sir.

Mr. Fordell: Those questions are certainly suggestive "That was the extent of your—" certainly it suggests the answer to the witness, and the witness gives you just the answer you want.

The Court: Even Mr. Kronner would not deny it. But go ahead, Mr. Kronner. I do not want to stay too many nights here.

Q. (By Mr. Kronner): Did you have any other social work that you did, if you recall?

A. What am I to understand by "social work"? You mean for the welfare of the people in general?

Q. Yes.

A. I rationed gas, and sugar, and helped out on those things where volunteer workers were called in, if that is what you mean, sir.

Q. And do you recall any other similar activities that you were engaged in, or that you took part in, any other social work of any kind?

A. No, that was all I could take care of.

Q. Do you recall of having done any work at the asylum at Ypsilanti?

A. Yes, this was in connection with the International Center.

Q. Did you go to Ypsilanti?

A. Yes, in Ypsilanti.

Q. What did you do there?

A. There would be mentally deranged people, and saw to it—contacted the social worker on the case to help them out, and their family,—to help their families out.

Q. Can you think of any other activities, social activities of a like kind besides the Red Cross, and the Parent Teachers, and the Social Center?

A. Not at the present.

Q. Did you belong to any political organizations?

A. I did not.

Q. Any social organizations?

A. The only membership I ever carried was the American Red Cross.

Mr. Kronner: That is all.

Cross Examination

By Mr. Fordell:

Q. Mrs. von Moltke, when you were served with the indictment in this case, did you read it?

A. I read it.

Q. And after you had read the indictment, did you feel you were innocent of the charges that were stated in the indictment?

A. Yes, sir, definitely so.

Q. You did not feel you were guilty of those charges that you read in the indictment?

A. I did not feel guilty of those charges in the indictment.

Q. Then you knew what the charges were in the indictment.

A. Oh, no, and so far I might explain that to you, I knew—

Q. Just answer my question.

The Court: Answer the question.

A. Yes, I knew, not what the charges were, but I knew as I said before that I saw I was accused of something of which I was not guilty. That was how I understood that.

Q. Well, you read the indictment. Isn't that right?

A. I read the indictment.

Q. And you felt you were innocent of the charges that were described in that indictment?

A. And the overt acts.

Q. And the overt acts?

A. Yes.

Q. Do you recall how many overt acts you read in that indictment, approximately?

A. Five.

Q. Now, after you talked to Mr. Collard, did you still feel you were innocent of those charges?

A. Yes, sir, because I told Mr. Collard so.

Q. After Mr. Collard had explained the indictment to you, did you still feel you were innocent of the charges described in the indictment?

A. I told Mr. Collard so, and I could not go outside of the fact of the rum runners—

Q. Regardless of what Mr. Collard told you, you still felt you were innocent of the charges in the indictment?

A. Yes, sir.

Q. Now, on September 25, I believe two attorneys came to see you.

A. Yes, sir.

Q. Do you know who sent those attorneys to you?

A. My husband.

Q. How did you know that?

A. Because they said so.

Q. Who said so?

A. Mr. Okrent.

Q. Had you discussed with your husband the matter of retaining an attorney for you?

A. I had not seen my husband since I was transferred from the Immigration Detention Home to the Wayne County Jail; I had not seen him, and he did not even know that I had the indictment.

Q. So, up to the time when the two attorneys visited you in the County Jail you had not seen your husband?

A. I had not seen my husband.

Q. Now, do you recall how long the attorneys remained with you?

A. Yes, for quite a while.

Q. How long?

A. For a couple of hours.

Q. Would you say that if the records showed that the attorneys entered about 2:50 P.M. and left the Wayne County Jail about 5:45 P.M., that would be right?

A. That could be correct.

Q. So you talked to these two attorneys for about two hours and a half?

A. I talked to one attorney, sir, and Mr. Berger was just sitting there.

Q. Which one did you talk to?

A. I talked to Mr. Okrent.

Q. Did they tell you that your husband had sent them to see you?

A. Mr. Okrent told me that he had talked to my husband, and that my husband had sent him, and that Mr. Berger came along.

Q. Did they tell you why your husband had retained them as attorneys for you?

Mr. Field: Just a minute, if the Court please. That assumes a retainer here, which has not been shown. The testimony so far is that these men came over and asked Mrs. von Moltke some questions. There was no retention of attorneys in the technical sense.

The Court: Well, I don't know that counsel claims

there was. He merely claims that they were there for a couple of hours, and a half, and we would be interested to know what they discussed during that time.

Mr. Field: The attorneys are here, your Honor.

The Court: Go ahead.

Q. (By Mr. Fordell) Did the attorney tell you that he had been retained by your husband?

A. No, because they had not been retained by my husband.

Q. Did he tell you why he had come to see you?

A. Mr. Okrent came to see me how I was, and he said that my husband had talked to him about the matter.

Q. About your case?

A. About the whole affair.

Q. Yes.

A. Because apparently my husband and Mr. Okrent had seen in the newspaper that I had been arraigned, and that I was in the County Jail, and Mr. Okrent had no definite appointment; my husband probably talked to him whether it would be possible, and Mr. Okrent inquired was I to have counsel, and I told him about the arraignment, and that Judge Moinet was going to appoint a counsel for me.

Q. Did Mr. Okrent offer to be your counsel?

A. No, positively not, because he was interested with Mr. Berger, and Mr. Berger did not commit himself. Mr. Okrent in his profession I understand is not—

The Court: Do not testify to what you just understand.

Q. (By Mr. Fordell) What did you discuss during those two hours and a half?

A. My family affairs.

Q. Your family affairs?

A. Yes, entirely, because I was very much in suspense about my child; and Mr. Okrent is a friend of the family and my husband.

Q. Why did you discuss the family affairs, and not the indictment?

A. Because it was the nearer thing to me.

Q. Because what?

A. That was what I was worried about.

Q. You were more worried about your family than you were about the indictment?

A. Yes, and this is the truth. I am here to tell you the truth, sir.

Q. Why didn't you, in addition to discussing the family affairs, also ask the attorney's advice about the indictment that you had in your possession?

A. I will answer that question very frankly to you, though I hate to do it, but in speaking about the case,—

The Court: Now, you may, so there won't be any unpleasantness—the only time you will not answer the question is when the Court says you do not have to answer, but otherwise answer as directly as possible.

A. I want to apologize. I am awfully sorry.

The Court: Go ahead.

A. Am I to answer this question?

The Court: There has not been any objection on anybody's part. It is not a matter of volunteering. You are on the witness stand, so take your time. If you do not understand the question, say so, and it will be repeated to you, and then answer as directly as you can.

A. Then would you kindly repeat the question?

Q. (By Mr. Fordell) My question was this, Mrs. von Moltke: Why was it that you did not discuss your case with the attorneys, although you discussed your family affairs with them?

A. Yes, I can give you an answer to that: Because Mr. Okrent said that my husband had talked to them, and could they help me, and Mr. Berger said, "You know I am a Jew, and you are on a Nazi spy charge, and I do not know whether—"

The Court: One moment.

A. Whether I—

The Court: One moment. Who is supposed to have said this?

A. Mr. Berger, the attorney, and the partner of Mr. Okrent.

Q. Oh, in your presence?

A. He said that to me, your Honor.

The Court: All right.

Q. (By Mr. Fordell) So that is the reason why you did not discuss the case with him?

A. So there was no—if anybody speaks to me this way, there was in my condition—I was there in the County Jail, and with the idea that Judge Moinet would appoint counsel for me. I felt that there was nothing to be said about it.

Q. Then you must have asked these attorneys at one time during your conference something about your case?

A. I did not, because my husband sent them.

Q. Well, how did Mr. Berger happen to tell you that he would not represent you, because he was a Jew, and you were charged with—

A. Mr. Berger did not tell me so. Mr. Berger said since that was the set-up, he would not know whether he would,—in reference to my husband he would not know whether he could consider even taking the case, or such a case.

Q. Did you ask him to consider the case?

A. No, I did not. Apparently my husband had asked him.

Q. Now, you were questioned on August 24, 25, 26 and 27 of 1943, by the agents; isn't that true?

A. That is true.

Q. You were not questioned any more after that, were you, by any of the agents?

A. Just once by Mr. Collard, who came to the Immigration Detention Home. That was between the time—between the time of September 1, to September 21.

Q. So that you were only questioned on August 24, 25, 26 and 27 and then one other question?

A. Yes, sir.

Q. Later on?

A. Yes.

Q. And then you were never questioned about the case any more, that is, in regard to things they wanted to know from you?

A. No, Mr. Collard and Mr. Hanaway did not question me.

Q. They did not question you any more?

A. No, I don't think so.

Q. So you were not subjected to a continuous course of questioning from the time you were arrested until you were brought into court; that is not true, is it?

A. Well—

Q. Yes or no?

A. Yes, I was questioned.

Q. Continually from—every day?

A. Whenever they came there there was one question on another they had to—Mr. Dunham and Mr. Kirby had to have certain information.

Q. Now, isn't it true that up until the time you plead guilty you repeatedly asked the agents for advice as to whether you should plead guilty or not? Isn't that true?

A. There was nobody else I could ask.

Q. Well, just say yes or no.

A. Yes.

Q. Did you?

A. Yes.

Q. And didn't they tell you to consult your attorney?

A. No; I am sorry, no, sir.

Q. And didn't you tell them that you did not want the attorney?

A. I never said such a thing.

Q. Didn't you tell them that you wanted them to tell you whether to plead guilty or not, and not the attorney?

A. No, I did not, sir.

Q. Didn't you on several occasions tell one or the other agent that you did not want the attorney that your husband had sent?

A. No, I was waiting for him, and Mr. Hanaway heard me say in the bull pen that I am going to wait for him, because my husband said Mr. Okrent would call on me again.

Q. Didn't you tell the agents that your husband wanted to get an attorney, but you did not want the attorney?

A. I did not.

Q. Your husband is trained in some respects on legal problems, is he not?

A. He is not.

Q. Isn't he a teacher of law?

A. No, he is not. He was a teacher of German.

Q. A teacher of the German language?

A. The German language, at Wayne University.

Q. Is that the only thing he has taught?

A. It is the only thing he has taught.

Q. Has he received education in law?

A. No.

Q. Are you sure?

A. Well, he probably, a certain amount of education in German law before the first World War.

Q. He has received a certain amount of education in German law?

A. Yes, I would say a certain amount of education, but his doctor's degree, the PhD is not in law, because he did not have enough.

Q. Now, while you were at the County Jail, how many times,—approximately how many times did your husband visit you?

A. In which time, please, sir?

Q. From the time that you were confined in the County Jail right up to the time that you pled guilty.

A. About four times.

Q. Wasn't he visiting you every week during visiting hours?

A. Yes, he came, the first time I saw him in the bull pen on the 28th of September, and then the next time, he would come then on Wednesday, and Sunday, visiting days, and then again on Wednesday.

Q. This was every week on Wednesdays and Sundays?

A. Well, there are just two weeks.

Q. Well, from—

A. From the 28th to the 7th of October; how many weeks are there?

Q.—That is right. Well, he exercised the rights of visitors at the County Jail, did he not?

A. For half an hour he came up to see me.

Q. And special arrangements were also made on one or two occasions for him to see you?

A. No, sir, not before that time, that was very much later when special occasions were made.

Q. Was that after you entered your plea of guilty?

A. That was very much longer, after I entered my plea of guilty, not at this time.

Q. Didn't you tell the agents that you had had some arguments with your husband regarding the matter of retaining an attorney?

A. No.

Q. Didn't you tell the agents that you were arguing with your husband because he was insisting that you retain an attorney, and you were telling him that you did not want an attorney?

A. I cannot remember any such thing. The only thing I might have said was that I could not figure where the money should come from.

Q. Well, you say you do not remember or would you say positively that you never told the agents that you and your husband were having an argument?

A. No.

Q. Over this matter of retaining an attorney?

A. Because we did not have an argument.

The Court: Pardon me. Will you stand up, please?

(A man in the court room stood up.)

The Court: Are you related to this woman?

The Man in the Audience: Yes.

The Court: Well, no matter how much you may be interested in this case, you may not be signalling to her.

The Man in the Audience: Yes, your Honor.

The Court: Are you the husband?

The Man in the Audience: Yes.

The Court: All right. Sit down.

Q. (By Mr. Fordell): Isn't it true, Mrs. von Moltke, that at one time you told the agents that you were not worried about your son any more; that you were satisfied with the way they had handled the situation for you.

A. I never told them that, that I was satisfied, and I was not worried any more. It is not true.

Q. Now, did the agents ever make any promises to you to induce you to plead guilty?

A. The FBI, sir, is a much too well trained body—

Q. Just say yes or no. You do not have to give me your opinion of the FBI. Did they ever make any promises to you to induce you to plead guilty?

A. What do you call a promise?

Q. Did they ever promise that they would do something for you if you pled guilty?

A. What do you mean by—does that cover an insinuation?

Q. Well, did any of the agents expressly tell you that if you pled guilty that they would see to it that you would get an easy sentence?

A. No.

Q. They never threatened you in any way, did they?

A. No.

Q. Did they ever tell you that you might get probation if you pled guilty?

A. It was in the discussion of things that it was assumed as a speculation, and as I said, they did not promise me anything, and they did not threaten me.

Q. In other words, they told you you might go to jail, or you might get probation?

A. No.

Q. What did they tell you?

A. It was in a discussion, sir, as I should think if an agent said, I should think that in your case it cannot be so bad, it might be even that sentence will be suspended.

Q. But no direct promise was made to you?

A. No direct, no, no.

Q. Was it you that first informed the agents that you wanted to plead guilty?

A. As I called—

Q. Did you make the request to talk to either Mr. Babcock, the United States attorney, or some agent in order to advise them that you wanted to plead guilty?

A. I did not make the request to see Mr. Babcock. In fact, I did not even know it was possible to ask for an interview.

Q. Well, how did either the agents or the District Attorney find out that you wanted to plead guilty?

A. Mr. Hanaway happened to be in the building, and I talked to him about it. Mr. Hanaway said he would

give my message to Mr. Babcock, but I opened the discussion to Mr. Hanaway about pleading guilty. I told Mr. Hanaway that after the conversation with the other woman, I felt that we were expected to fall in line, and plead guilty, not because I felt I was guilty, but I wanted to cooperate. And I asked Mr. Hanaway to ask Mr. Babcock whether—as to the three points, that I would plead guilty in order to cooperate if the publicity could be stopped right away, and if I would not be sent far away to an institution if I am sentenced, and that I never will be deported.

Q. Well, Mrs. von Moltke, what do you mean when you say that you told Mr. Hanaway that you would plead guilty to cooperate?

A. I understood that was a term which was at this time in the air in the cell block, which means to cooperate, if I be permitted to explain that to you, to cause the state very little expense, to cut the work down for all the offices concerned, and have the case closed for the District Attorney's office as quickly as possible, which in turn would be acknowledged as a cooperation, and which in turn would enable me to get the quickest way back to my child, and my family. After all, sir, there was a war on, and you have to realize the situation.

Q. Well, Mrs. von Moltke, did any of the agents ask you to plead guilty in order to cooperate?

A. No.

Q. But you claim you did tell Mr. Hanaway that that was why you were pleading guilty, in order to cooperate?

A. Yes.

Q. And then did Mr. Hanaway come back and give you the answer that Mr. Babcock had given him?

A. No, Mr. Hanaway came back this afternoon, and said Mr. Babcock would like to talk to me, and to Mrs. Leonhardt.

Q. And then you were brought into the United States Marshal's office. Is that right?

A. Yes.

Q. Did Mr. Babcock come there?

A. Yes.

Q. And what did you say to Mr. Babcock?

A. I said to Mr. Babcock that I wanted to plead—I consider to plead guilty, because—not because I am guilty, but I know he wants me to. Mr. Babcock did not say anything to that. And I said the publicity is so terrible, and that my children and my husband, they all have to live, and that I sent word to him by Mr. Hanaway if he would grant me that the publicity would be stopped, and that I would not be sent away, and that I never would be repatriated, deported, that I would plead guilty to get it over with.

Q. Did you tell Mr. Babcock that you were pleading guilty, not because you were guilty, but because you wanted to cooperate?

A. I did.

Q. And then you expressed these three conditions upon which you wanted to enter your plea?

A. Yes, sir.

Q. What did Mr. Babcock say to you?

A. Mr. Babcock answered, and said as to the publicity there is not much I can do, because we have the law of the free press; as to being sent away in prison, or to an institution, that does not rest with me; the head of this is Mr. Bennett in Washington. And he explained that you have to write to Mr. Bennett. But Mr. Babcock said in view of the condition in my family with a sick child I would get consideration, and he would give me a recommendation. And as to the deportation, about which I was worried most, as Mr. Hanaway and all the agents knew, he said it is not very likely that I would be deported since my husband is an American, and since I have three American-born children, and that he could not say what the next year would be, whether he would be in office or not, but certainly if it need be he would give me a recommendation, and he was certain that Mr. Lehr would do so. And he said he could not suggest anything to me. The decision whether to plead guilty or whatever I did rests solely with myself, because if he would do or would influence me and his office does not permit him to influence me, but he wanted me to keep in mind that he—I quote him as he said, that he said, “I

want you to keep in mind we are human''. That is what Mr. Babcock said.

Q. Didn't Mr. Babcock say to you you should not plead guilty unless you thought you were guilty?

A. I cannot remember that.

Q. You are not sure whether he said that?

A. I am not sure. I only remember Mr. Babcock said, "I cannot make any suggestions one way or the other, because I am not permitted to influence you, and that would be influencing you if I suggest anything to you."

Q. But you understood from what Mr. Babcock told you, that the decision as to whether or not you should plead guilty or not was up to you?

A. No, I was not concerned about that.

Q. Did you understand that?

A. No.

Q. You mean that you did not understand that the decision was up to you?

A. No, sir, I understood—I would have understood if Mr. Babcock would have said to me in my way I understand things; I cannot give you an answer to that. I can give you one answer to that, and that is, no, we cannot do anything for you.

Q. Didn't he tell you he had no control over the newspapers, and consequently could not assure you that publicity could be suppressed in the event that you pled guilty?

A. No; he said "There is not much I can do about it." And as I understand the American language, if you say "There is not much I can do about the case", that you mean there can be a little done.

Q. But that was your conclusion?

A. That was my conclusion unfortunately.

Q. But Mr. Babcock did tell you there was nothing he could do about it?

A. He said not much, because there is a free press, and I listened for that "not much".

Q. Didn't he also tell you that he had no control over the proceedings that might be instituted against you for the purpose of deportation.

A. I beg your pardon, sir. Would you say that?

Q. Didn't he say to you that he had no control over any proceedings that might be started?

A. He did not.

Q. To deport you?

A. In fact, he was very kind and human by saying, "I do not think that should worry you, because"—then getting his speech—"after all, we are human." And I understood the human side of it.

Q. Didn't Mr. Babcock say that if you plead guilty you should not plead in reliance on any of these conditions that you had expressed to him?

A. Mr. Babcock did not say such a thing, because in consequence of the discussion with Mr. Babcock, Mrs. Leonhardt went ahead and pled guilty, and she said to me afterwards "Mr. Babcock, I am sure, will do for me what he can."

Q. At any rate, you did not plead guilty on that occasion?

A. I did not, because I saw my husband.

Q. And our husband told you not to plead guilty?

A. He did.

Q. He told you to get a lawyer?

A. Yes; he said I should not before I have seen an attorney; on such a question I should talk to an attorney first about the whole thing.

Q. Then you knew at that time that you were entitled to a lawyer before you pled guilty, if you wanted one?

A. I did not. I just was wondering about the lawyer who never came.

Q. Well, you knew at that time, did you not, that you did not have to plead guilty if you did not want to? Yes or no?

A. No.

Q. Your husband told you to get a lawyer, didn't he?

A. My husband said to wait until a lawyer comes out.

Q. And you decided not to plead guilty because of that?

A. Because of that, yes.

Q. And you went back to the County Jail?

A. And the answer Mr. Babcock gave me was not fully satisfactory:

Q. At any rate, you decided not to plead guilty because of what your husband told you?

A. Yes.

Q. Did you see your husband about getting a lawyer before you pled guilty?

A. No, sir; I pled guilty, and my husband even did not know it.

Q. Why didn't your husband know it?

A. Because he did not come up during this time, and I had no chance to see him. He saw me the time the next day after I had pled guilty, and Mr. Dunham and Mr. Kirby were there, and Mr. Dunham saw that I was very much upset about it, and I was crying.

Q. So, during the week you decided to disregard the advice that your husband had given you?

A. Yes, sir.

Q. And plead guilty instead?

A. Yes.

Q. You made that decision; yes or no?

A. Yes.

Q. And as a result of that decision you notified somebody to contact you about pleading guilty?

A. No.

Q. How did the agents or the District Attorney discover that you had changed your mind again, and decided to plead guilty?

A. Mr. Collard came and visited me on Thursday, on Wednesday night, and it was said to him that I would think it over, and I made the day for my last decision Thursday, and Mr. Collard and Mr. Hanaway came up Thursday, and found out, and Mr. Collard would say "Have you seen your lawyer?" And I said "No."

Q. Didn't Mr. Collard say this to you, "Have you seen your lawyer?"

A. Mr. Collard asked me if I had seen my lawyer.

Q. And you say "no"?

A. Yes.

Q. Did you tell him why?

A. No.

Q. Did he ask you why?

A. No.

Q. Did you tell him that you had decided to plead guilty?

A. No. On the Thursday he came up with Mr. Hana-way to find out what I had decided. I was very undecided about the case, and very much upset.

Q. Did you tell them then that you had decided to plead guilty?

A. I said, "All right, I will go with you", because this was the time shortly before I had this discussion with Mr. Collard which I had—

Q. (Interposing): Well, did you tell them that you decided to plead guilty?

A. Yes.

Q. And then where were you taken?

A. To Mr. Babcock's office.

Q. Immediately after you told them that you wanted to plead guilty?

A. Why they were there and took me along.

Q. And you went to Mr. Babcock's office?

A. Yes, sir.

Q. Now, what did you tell Mr. Babcock at this time?

A. I said, "I am going to plead guilty"; I said, "Though I know I am not guilty."

Q. You told him that?

A. Yes, sir, to get over with it.

Q. To get over with it?

A. Yes.

Q. You expressly told Mr. Babcock that you were not guilty?

A. Yes, I did.

Q. But you wanted to plead guilty in order to have it over with?

A. To cooperate, to fall in line, to get it over with.

Q. I believe no one had requested you to do that?

A. No.

Q. You knew that you did not have to do that if you did not want to?

A. I did not know that.

Q. When your husband told you not to plead guilty, you did not plead guilty?

A. My husband did not say because I don't have to. My husband felt that the case needs a lawyer, and I should have at least the legal advice, and I even did not know whether I really was entitled to counsel.

Q. Did you again express the three conditions to Mr. Babcock?

A. No.

Q. What else did you say to him besides telling him that you were pleading guilty although you were not guilty?

A. There was nothing else to be said.

Q. Did he advise you again of your constitutional rights?

A. No, I cannot remember that Mr. Babcock said any such thing.

Q. Didn't he say to you you should not plead guilty unless you felt you were guilty?

A. I cannot recall that.

Q. Didn't he tell you that he could not give you any assurances that the conditions that you expressed to him might be fulfilled.

A. We did not talk about that at all.

Q. Then you went directly down to Judge Lederle's court?

A. Yes, sir.

Q. Now, did Judge Lederle question you before you pled guilty?

A. Yes; he said something to me.

Q. Did he ask you if you wanted an attorney?

A. I cannot recall that, because it was in the midst of a trial, and I was so confused, and so nervous I did not hear what the judge said.

Q. Well, Mrs. on Moltke, the trial was not going on while you were being questioned by Judge Lederle.

A. But there was a court room full of people all staring and looking at me.

Q. The people were in the back of the court room, were they not?

A. They were sitting all around.

Q. They were not sitting inside the rail, between the Judge's bench and the rail?

A. Sir, you have never gone through such a procedure probably.

Q. These people were not crowding around you, were they?

A. There was a crowd, and the moment I entered, and had to wait, all these people were looking at me, and I was very, very nervous, because I did not go with a light heart, and say, "I am guilty, your Honor, and I want to change my plea."

Q. Well, do you remember the Judge asking you if you wanted an attorney before you pled to the indictment?

A. No, I only remember that Mr. Babcock handed him a folder, and the Judge looked into that, and he said, "I cannot accept this change of plea", or something in legal language, because on account of an attorney, and one thing and another; I heard "an attorney", and he could not accept that.

Q. Do you remember the Judge asking you if you had read the charges in the indictment?

A. I remember that the Judge said, had the indictment been explained to me.

Q. And what did you say?

A. I said yes, because Mr. Collard has explained to me.

Q. Do you remember the Judge asking you if you were pleading guilty because you were guilty?

A. Yes.

Q. And what did you say?

A. I said yes, because I had made the arrangements with Mr. Babcock. I cannot go to Mr. Babcock and say "I plead guilty, because I want to cooperate"—

The Court (interposing):— One moment. I do not want the record to appear that you made any arrangement with Mr. Babcock. Under your own evidence you had made no arrangement with Mr. Babcock. Now go ahead.

Q. (By Mr. Fordell): Mr. Babcock did not request you to plead guilty, did he?

A. No.

Q. Mr. Babcock told you that if you wanted to plead guilty it had to be voluntarily on your part, didn't he?

A. It might be.

Q. Well, aren't you sure of that?

A. I am not sure of that.

Mr. Field: If the Court please, I am sorry to interrupt, but I believe this is more or less beside the point, and outside the issue. There is no claim in the petition that Mr. Babcock made any representations or propositions.

The Court: Well, the witness used the word "arrangement" with Mr. Babcock, and that is what I want and do clear from the record, that there is no testimony or evidence at all, even her own, that she made any arrangement with Mr. Babcock.

Mr. Field: We make no such claim in the petition.

A. (By the witness) I beg your pardon, your Honor. The word "arrangement" I did not mean that.

The Court: What did you mean?

A. There must be—naturally I did not mean "arrangement". I used the word, but this is not what I wanted to say.

The Court: Well, it is off the record, anyway; it will be stricken. You certainly had no arrangement with Mr. Babcock.

Q. (By Mr. Fordell) You say that when Judge Lederle asked you whether you were pleading guilty, because you were guilty, you said "yes"?

A. I said "yes".

Q. You understood that question, didn't you?

A. I did understand that question.

Q. And you intelligently answered it, didn't you?

A. I said "yes", because I said before to Mr. Babcock "I am going to plead guilty."

Q. And then the Judge asked you whether you wanted an attorney?

A. I do not remember that he asked me that question.

Q. Did he ask you to sign something?

A. No. A note was given to me, and I don't know who gave it to me.

Q. Did you sign it?

A. Yes, after I asked Mr. Babcock about it.

Q. Did you read it?

A. I read it.

Q. What do you remember reading?

A. I remember that it was said that I was to appear for trial in court if I was requested to do so, and I did not want that.

Q. Did you sign it?

A. I asked Mr. Babcock what that trial affair means, and Mr. Babcock said that it is more or less a—I understood that a matter of form, and he said that is all right, you can sign this. And I signed it.

Q. You are sure the form did not read something like this: "I, Marianna von Moltke, being the defendant in the above-entitled cause, having been advised by the Court of my right to be represented by counsel, and having been asked by the Court whether I desire counsel to be assigned by the Court, do hereby in open court voluntarily waive and relinquish my right to be represented by counsel at the trial of this cause."

A. I am sorry, sir; I seem to recall that I had not such a long sheet, that it was a small piece of paper.

Mr. Fordell: Well, I do not think there is any question as to what she signed.

Mr. Field: We will concede that the exhibits attached to the return to the order to show cause are part of the evidence in the case.

Q. (By Mr. Fordell) Now, after you left the court, isn't it true that Mr. Collard here tried to protect you from having your picture taken by the photographers?

A. That is after we went around the corner, and Mr. Collard did not try to protect me, but Mr. Collard did not object as I shoved him over. But later on he said, "I could not have been shoved you could not have shoved me, if I would not have let you." And I acknowledged that it was very kind of Mr. Collard.

The Court: You said that you did not think the paper was as large as the one counsel offered you. It may be because that is a photostatic copy, and is black, and it looks larger. Was that the type,—look at that paper.

A. Yes, but I cannot remember—

The Court: That is the form that is used?

A. Well, I think that—I tell the truth, your Honor. I cannot remember.

The Court: Do you remember reading something?

A. Something about I was to appear for trial.

The Court: Oh, well, there is nothing on this about appearing for trial.

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ARCHIE KATCHER was thereupon called as a witness on behalf of the Petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kronner:

I am now referee in bankruptcy of this court. On the 21st of September, 1943, I was employed by the Referees in Bankruptcy. I am a member of the Michigan State Bar. I was admitted to practice in 1940. I was a practicing attorney on September 21, 1943. I was engaged in the part-time practice of law at that time. I had been employed in the referee's office approximately ten years at that time. I was combination clerk and printer.

I recall, having seen Mrs. von Moltke in the court room of Judge Moinet when she was brought in for arraignment. She was with Mrs. Leonhardt, who was also a defendant, and several other men, some of them from the U. S. Attorney's office, and others whom I did not know. I was engaged in trying a lawsuit in Judge Moinet's court when these women were brought in.

Q. Did Judge Moinet appoint you as counsel for either or both of these women?

A. He appointed me for both of them.

Q. Will you state the circumstances under which that appointment was made?

A. Well, I was in court defending somebody, I don't know who it was, another matter in which I had been appointed to represent this indigent defendant, and that matter was going on at that time, and it was interrupted by the bringing in of Mrs. Leonhardt and Mrs. von

Moltke. There was some whispering in front of the court room after our proceedings was suspended, and then Judge Moinet motioned me up to his bench, and he asked me at that time in a whispered conversation whether I would represent Mrs. Leonhardt and Mrs. von Moltke. I do not remember the exact conversation that I had with Judge Moinet at that time. It was whispered, as I said, but I did somehow convey to Judge Moinet the thought that I did not want to be in that case, and then Judge Moinet said, well, it would just be for the arraignment, and it would only take a few minutes. And then I agreed to do so, and he did appoint me for both women, Mrs. Leonhardt and Mrs. von Moltke.

Q. You had never seen Mrs. Leonhardt or Mrs. von Moltke before that?

A. No, I had not.

Q. You had never talked to them before that?

A. No, I did not. I had not, no, sir.

Q. And then after you accepted this appointment to appear for Mrs. von Moltke and Mrs. Leonhardt at the arraignment only, did you have any conversation with Mrs. Leonhardt and Mrs. von Moltke?

A. Yes, I did, right there in the court room.

Q. Were they sitting down at the time?

A. Yes, they were both sitting down, on that side (indicating). Judge Moinet's court room is set out much like this. There are chairs over along that wall. Both were sitting there together.

Q. And after you accepted the appointment, you then went over and talked to them?

A. That is right, yes.

Q. Did you sit down?

A. No; I believe I bent over, and talked to both of them in a whispering manner.

Q. Will you tell the substance of that conversation?

A. Well, I asked both of them, that is, both at once, whether they understood what this was all about. I believe that is quite similar to the language I used. And one or the other of them said, yes, they did understand, and the other indicated that she, too, understood. And

then I asked if they felt that they were guilty or not guilty, and both indicated that they felt they were not guilty. I then rather hurriedly explained to them the advantage of standing mute as against pleading not guilty at that moment, and it was agreed that they would both be stood mute.

Q. And then what happened?

A. Well, I took them both up before the Court; I believe that Judge Moinet was sitting there all the time; and we came up before the clerk's bench, and I indicated to the Court that both defendants were standing mute.

Q. Do you recall whether Judge Moinet said, while you were there, that he would appoint counsel for Mrs. von Moltke?

A. I am not too sure of that. I do know that it was definitely understood that I was to represent them on the arraignment only.

Q. How long did this conversation that you had with Mrs. von Moltke and Mrs. Leonhardt—how long a time did that occupy?

A. Just a matter of a couple of minutes.

Q. And as I understand it, it was a whispered conversation?

A. That is right.

Q. Entirely?

A. Yes.

Q. You did not have the indictment?

A. No, I did not.

Q. You did not advise them of the nature of the charges?

A. No, I did not.

Q. You did not advise them on anything excepting as to their advisability of standing mute?

A. That is correct.

Q. Was that the extent of the service, of the legal assistance that you gave Mrs. Leonhardt and Mrs. von Moltke?

A. Yes, I had no further contact with them.

Q. Did you enter your appearance formally for them?

A. Yes, later on that day.

Mr. Field: If the Court please, I believe the appearance is in the file. We would like to have it made a part of the record in this proceeding.

The Court: You may do that.

Mr. Field: No objection, Mr. Fordell?

Mr. Fordell: No.

The Court: I do not think there is any dispute about the matter, is there?

Mr. Fordell: No, your Honor.

The Court: It is admitted.

Mr. Kronner: I think there would be an order of appointment also.

The Court: That is ordinarily true. It is in this court.

Mr. Kronner: So both the order of appointment also—

The Court: That may be admitted also.

Mr. Fordell: If they are in the file. If they are in the file, there is no objection.

The Court: It is conceded that was done. That is the ordinary routine.

Q. (By Mr. Kronner) You say you asked Mrs. von Moltke if she knew what the charges were?

A. I don't think I put it quite that strongly. I think I said to her, "Do you understand what this is all about?"

Q. And what did she say?

A. She said yes; either she did or Mrs. Leonhardt did. I am frank to say I am not too clear on it, but they both indicated their understanding. That much is true.

Q. And they both indicated that they were innocent?

A. Yes.

Q. And for that reason you stood mute for them?

A. That is correct.

ISADORE ARNOLD BERGER, was thereupon called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Field:

I am an attorney admitted to practice in the courts of

the State of Michigan and the senior member of a law firm located in Detroit. Harry Okrent has been associated with my firm since 1943.

Q. Do you recall an occasion on September 25, 1943, when you accompanied Mr. Harry Okrent to the Wayne County Jail?

A. I recall going to the County Jail with Mr. Okrent but I do not recall the exact date. On that occasion I saw and talked with Marianna von Moltke. Mr. Okrent was present at that time. He did most of the talking. We both talked. He may have carried most of it. I am not quite sure. I understood Mr. Okrent's connection with the case involving Mrs. von Moltke. I understand that he was a student of Mr. von Moltke in German at Wayne University. As to how long Mr. Okrent and I conferred with Mrs. von Moltke at the Wayne County Jail I could not say excepting that we spent some time with her, and she told us her story in quite detail. I interrogated Mrs. von Moltke as to the reasons why she was in jail, and the charges that had been made against her. I think I saw the indictment at that time. We went to see her at the request of her husband; that is, I don't think he made that request of me. The request was made, I believe, of Mr. Okrent, and I went along with him. It was partly at my request, and part Okrent's that I go with him, and I thought maybe under the circumstances I ought to go with him.

Q. And what did you find Mrs. von Moltke's condition to be at the County Jail? If you found it to be otherwise than normal?

Mr. Fordell: I object to that. He cannot testify as to her physical condition.

Mr. Field: I think he can, if there was anything abnormal about it.

The Court: Did you know her?

A. Before? No.

The Court: How could he make a comparison?

Mr. Field: It is a good point, I say, your Honor, but I imagine if her actions and her conduct were abnormal as viewed from the usual standards that Mr. Berger would perceive that.

The Court: Yes. If there was anything very unusual. A person screaming or crying convulsively; if there is terror in their face, or voice; those things are not normal in anyone. And if they were there, those may be described.

But what her ordinary attitude was, or her ordinary voice, or her ordinary emotional exhibition, if he had never seen her before, he certainly cannot be in a position to compare it with any other condition.

Q. (By Mr. Field) Well, I will ask you whether you found any conditions that the Judge mentioned existing with respect to Mrs. von Moltke?

A. That she was nervous, and talked rapidly, and fidgety.

The Court: You see. I talk so rapidly sometimes the court reporter has got to stop me, and I am not nervous. So that would not indicate nervousness in itself. There are a lot of people that talk rapidly, and a lot of people twist their fingers.

Mr. Field: I think your Honor is right about that, absolutely; so I will withdraw the question.

Q. (By Mr. Field) What did Mrs. von Moltke talk about during most of your interview, Mr. Berger, if you can recall?

A. About this case, about the indictment, or the conspiracy under the Espionage Act. We wanted to know the whole story, and I presume she told us. I think she did. Mr. Okrent went there at the request of Mrs. von Moltke and I went along because of the nature of the case, and the country being at war, and Okrent and I being of the certain race that was particularly affected by the war, and then also there was our emotional feelings toward her people generally at the time, and then our duty as lawyers was argued back and forth, and should we or should not we, or should he or should not he, so I said, "Well, I will go along with you, Harry"; because he went along not as an attorney, and we had that definitely understood that neither of us—

The Court: Well, pardon me. With whom?

A. With Mr. von Moltke.

The Court: Well, all right now. Let us stop there a minute. It was your associate who talked to Mr. von Moltke, was it not?

A. Well,—

The Court: Did you talk to him, too?

A. Yes, I did.

The Court: Before you went there?

A. Before I went there.

The Court: All right; I understand the instructions came through your associate.

A. It did; but I was there, and he requested Okrent to go.

The Court: All right. Then you heard the instructions that were given by the petitioner's husband?

A. That is correct.

The Court: All right. You may tell about it.

A. That we would not act as attorneys, that we would go there and see what she had to say, listen to her story, and come back and report to Mr. von Moltke what she had to say. He was nervous, too. And I said to Harry, "We will go over there, and talk to her,"—and then when we went in there, we said to her, Mr. Okrent and I, part of it was my conversation, and part of it was his; that we were not appearing there as her attorney, or as an attorney; I did not want to restrict myself in—if she should disclose any information that I thought the Government should know, I should be free to disclose that. I told her then that whatever she was saying was not being said to an attorney as an attorney, that I was merely there with Mr. Okrent, and he was there on the same basis, to find out what it was about. If she wanted to talk, she could tell us; but that we were not holding anything that she said in confidence; that if she wanted to tell us, she was free to do so. And we explained to her who sent us, and she proceeded to tell us the story.

Q. You did mention the fact that being of the Jewish faith, that it was an embarrassment or complication in the matter, did you not?

A. Yes. And we had quite a bit of discussion in the office over that matter, and we felt it was at least our

duty to go over there and talk to her, and report back to her husband.

Q. And during the interview, do you recall whether Mrs. von Moltke expressed any concern for her husband, or her children?

A. Yes.

Q. And was that discussed?

A. Yes; I asked her questions about—there were matters that were in my mind; I wanted to know whether she was guilty; I was interested in that; and I asked her questions that I directed her conversation along certain lines, and she answered them, and she was quite interested in her husband, and how he was getting along, and whether he would be reinstated or how was he taking it, and about this diabetic child. And then we went into these two children that were in Europe, and I tried to find out whether that did not point to her guilt, as to why they sent them over there, and so forth.

Q. Did she explain that to you?

A. She explained that to me.

Q. And did you during this interview, did you or Mr. Okrent, rather, during this interview, advise her of the nature of the charges made against her, or their implications of the charges?

A. No, sir.

Q. And did you advise her of possible defenses, or legal rights, that she might have, by way of demurrer, or motion to dismiss, or anything of that kind?

A. No, sir.

Q. And after you had concluded your interview with Mrs. von Moltke did you consider the advisability of representing her as attorneys?

A. Well, we discussed that many times.

Q. I mean you and Mr. Okrent.

A. Yes, the two of us discussed it many times, and we argued over the matter.

Q. And did you finally come to a conclusion?

Mr. Fordell: Well, it is not material here as to what conclusion they came to.

Mr. Field: Well, it is a nice ending for this testimony.

The Court: Well, you decided not to do it?

A. No.

The Court: Did you represent her?

A. No. We had hoped that the issue would not be presented where we would have to decide. I did discuss the matter with a prominent member of our faith, and what if the matter was put squarely up to us, "Will you take it?" Or "We want you to take it"; what should we do? It was not just an ordinary issue. And he advised us "yes".

Q. (By Mr. Field) And did you finally report to Mr. von Moltke of your decision?

A. No, not of the decision. We just reported what Mrs. von Moltke said.

Q. And was that the end of the matter, so far as you and Mr. Okrent were concerned?

A. No; that was as far as we were concerned, in reference to Mrs. von Moltke. Mr. von Moltke came up to see us, to see Okrent primarily, and if he was not there I would have a few words with them.

Q. But were you ever retained by Mr. von Moltke?

A. No, sir; excepting that Mr. Okrent was assigned by the Court to represent her on a motion to withdraw her plea.

Q. That was some time later?

A. That is right.

Cross Examination

By Mr. Fordell:

Q. Well, Mr. Berger, you and Mr. Okrent went over to the Wayne County Jail to see Mrs. von Moltke primarily to discuss the charges that were in that indictment?

A. Yes, sir.

Q. You did not go there to discuss the condition of her son primarily?

A. No, sir.

Q. Nor the consequences to her husband with regard to his position; is that right?

A. Not specifically. That was not the purpose.

Q. Your purpose was to discuss this case with her?

A. That is right.

Q. And you did discuss this case with her?

A. That is right.

Q. You read the indictment at that time?

A. Yes, I did; yes.

Q. Did you read it to her, to Mrs. von Moltke?

A. I read parts of it. There were certain—she stated her story, and then I wanted to—well, it was a form of cross-examination. There were certain charges in the indictment, and I said, well, how about this? And then she gave me her answer to that.

Q. You examined her insofar as the indictment affected her?

A. Yes, sir.

Q. So you covered the charges that were more or less directed toward her?

A. Not—I may have, but not fully. I just picked up as I glanced through it. It was quite lengthy. And I glanced through it, and as I found something in there that pertained to her that I thought might be embarrassing to answer, I presented it to her to see what she had to say, and she gave me an answer.

Q. Well, you knew that she had read the indictment before that?

A. I thought she had, presumed that she had.

Q. From her conversation, did you so understand?

A. Oh, I don't know why I presumed it; I just think she read it; I don't know.

Q. But she did protest her innocence of the charges contained in the indictment?

A. That is correct.

Q. So part of the time that you spent with her was devoted to the discussion of this case?

A. Well, it was all around the case, and the incidental phases of the case.

Q. Did she tell you at any time that she did not want you as counsel during that interview?

A. Well, no; we stated specifically a couple of times, because she asked us some questions, you know, what she all should do, and we emphasized it a number of times that we cannot advise you, remember now we are not telling you or advising you as a lawyer, we are not

telling you what to do, but we are just here to find out what this is about, and ask some questions, and go back.

Q. Did you at any time during this interview tell her that she was entitled to counsel?

A. That I do not recall. I may have. I do not recall that.

Q. You may have told her that she was entitled to counsel if she requested it?

A. I may have.

Q. What were some of the questions she wanted answered?

A. Well, the only thing that—the question of pleading guilty came up, and would her husband get his job back, or would it go easier with her, or something pertaining to pleading guilty, and whether it would not be better if she did. And I again reiterated to her that I am not going to advise you whether you should plead guilty or whether you should not; if you are guilty, plead guilty; and if you are not, do not; and I cannot and Okrent cannot tell you yes or no on the thing, and then I told her again why we were there.

Q. Well, did you tell her if she was not guilty she should not plead guilty?

A. Just how I worded it, I could not—I do know, that part I do know.

The Court: Well, in substance you have already said that; you said that you told her if she were guilty to plead guilty, and if she were not guilty, not to plead guilty.

Q. (By Mr. Fordell) You told her that?

A. Something to that effect; that I am not here to advise you.

Re-Direct Examination

By Mr. Field:

Mr. Okrent is in Rochester, Minnesota, for a check-up, and he will be back probably Wednesday.

Mr. Field: If the Court please, with Mr. Berger the petitioner rests.

The Court: Very well. Mr. Fordell.

CHARLES T. HANAWAY was thereupon called as a witness on behalf of the Respondent, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fordell:

My name is Charles T. Hanaway. I was employed by the Federal Bureau of Investigation during the year of 1943. I had occasion to meet the petitioner in this case. I was one of the officers who first arrested her. I believe that was on August 24, 1943. And from that date until the time she entered her plea of guilty, I saw her on several occasions. I saw her the first time on the morning of August 24, when we arrested Mrs. von Moltke. We questioned her that day; on August 25, August 26 and August 27; I saw her on all four of those days. To the best of my knowledge I did not question her after those four days.

Q. Did you at any time make any promises to the petitioner in this matter, promises of any kind or nature to induce her to plead guilty?

A. I did not.

Q. Did you threaten her in any manner to induce her to plead guilty?

A. No, sir.

Mr. Field: Well, if the Court please, there is no charge or claim of threats in this case.

The Court: I think the petitioner's own testimony, she said there has been no promises and no threats.

Q. (By Mr. Fordell) Did she at any time ask you for advice in the matter?

A. Now, I might say at this time that this is almost two and one-half years, your Honor, and my recollection on a lot of things is not too clear. But to the best of my recollection, on one occasion that I went over to the County Jail Mrs. von Moltke had the indictment there. In fact, I did not even know that an indictment had been returned, I believe, and at least I had never seen the indictment. And she asked me to explain the indictment to her, and I refused to attempt to explain the indictment.

Q. Did she at any time ever ask you after that for advice, as to whether she should plead guilty in the case?

A. That is a very hard question to answer. I know there were—the question came up a few times. I want to make this clear. I did not visit Mrs. von Moltke a great deal after the questioning, that is, the first four days of questioning, and the few times I was over there there was general discussion among the three ladies that were in there, and the agent that were around, and it centered about whether they were going to plead guilty, or they were going to trial, or what was going to happen. And they were all trying to make up their minds. I do know that for some time—at some time or other I told Mrs. von Moltke that if she felt that she were innocent in her heart she should under no circumstances plead guilty. Now, when I told her that, I don't know.

Q. Well, on one occasion she did advise you that she wanted to plead guilty.

A. Yes. I do not recall how that came about. I believe there was a telephone call at the office for me to go over to the jail, but I am not sure about that.

Q. At any rate, you went over there?

A. I went over to the jail. Mrs. von Moltke told me that she decided to plead guilty. I do not recall about when this took place. I would say that it was probably on the latter part of September, but when I don't know. I would say it was a couple of weeks before she entered her plea of guilty in the case. She told me that she had decided to plead guilty, but that before she pled guilty there were certain things that she wanted to know; there were certain conditions as she put it. I believe that was the word that she used. The conditions were three, as I recall them: One was that if she plead guilty she would not be deported after the expiration of her sentence; the second one was that she be sent to some penitentiary or institution near Detroit so that her family could visit her; and the third condition was that the newspaper publicity be stopped. I, of course, told her that in my capacity as an FBI agent I had no control over any of those things, but that I would convey her message to Mr. Babcock, which I did.

Q. Did she say to you at that time that she was pleading guilty because she wanted to cooperate?

A. If she did, I do not recall it.

All I remember was these three conditions upon which she predicated her plea. I communicated her message to Mr. Babcock. To the best of my recollection I communicated to her the answer Mr. Babcock gave me. Now Mrs. von Moltke has stated that I came back and told her that Mr. Babcock wanted to see her. She may be correct, but I believe that I told Mrs. von Moltke what Mr. Babcock told me about these conditions. I recall what Mr. Babcock told me.

Q. Will you tell the Court what you told her as to what Babcock's answer was on those conditions?

A. Well, Mr. Babcock told me that as far as the publicity was concerned, of course he had no control over the papers whatsoever. That was something that he could not control, and he could not do anything about it. As far as the deportation proceedings were concerned, he told me that that matter was in the hands of the immigration and naturalization and he had no control over it. As far as being sentenced, or stationed at some institution near Detroit, he told me that again he had no control over that, that the Bureau of Prisons after sentence was passed designated the penitentiary or institution in which the sentence might be served. But he did state that under the circumstances, that was with her child being ill, or diabetic, he would write a letter of recommendation to the Bureau of Prisons recommending that she be sentenced to some institution or sentenced or sent to some institution near Detroit. But he also emphasized, and I believe I also emphasized it to Mrs. von Moltke that the recommendation was not binding upon the Bureau of Prisons. In other words, he had no power, it was merely a recommendation, and nothing else.

I frankly do not remember what Mrs. von Moltke said after I had related what Mr. Babcock had told me. Mrs. von Moltke and I probably discussed this matter, but the conditions were there, I mean they were facts. She indicated that she still wanted to plead guilty. She was

then taken to the Marshal's office. Now, whether it was that day, or another day, I don't know. It was that day, or within a day or two. I believe Mr. Collard and I took her over to the Marshal's office. Mr. Babcock talked to her at the Marshal's office. I was present at a good part of the conversation. There was some of the conversation that I do not believe I was present at. These three matters were brought up again, and I was present when Mr. Babcock told her exactly what he had told me before, and I had related to her before, on the conditions.

Q. Well, did she, when talking to Mr. Babcock, tell him that she was pleading guilty although she felt she was not guilty?

A. I do not recall her saying anything like that.

Q. Do you recall her stating that she was pleading guilty because she wanted to cooperate?

A. I do not recall that.

Q. Had she at any time told you that she wanted to plead guilty in order to cooperate with the Government?

A. Not to the best of my recollection. In fact, as I have stated before, at some time or other I told Mrs. von Moltke that if she were innocent she should not under any circumstances plead guilty.

Q. Did you at any time during this period right up to the time she pled guilty, suggest to her that she plead guilty in order to cooperate with the Government?

A. I did not.

Q. Did you at any time tell her that it would be wiser for her to plead guilty?

A. I did not.

Q. And you say that Mr. Babcock again repeated to her that he had no control over the newspapers in order to assure her that the publicity would be suppressed?

A. That is correct.

Q. That he had no control over any proceedings that might be started thereafter in order to deport her?

A. Yes; he not only stated that, but as I recall, he went a little further there at the cell than he had gone in his original instructions to me, or the message that I carried. He also stated that he did not know how long

he would be in the United States Attorney's office and that if he left the United States Attorney's office six months from then, or a year from then, he was no longer in a position to do anything if he wanted to do anything.

Q. Well, did he tell her that if she pled guilty it would have to be independently of any of these conditions she had expressed to him?

A. Yes. He did tell her that.

Q. Did he tell her that she should not plead guilty unless she felt she was guilty?

The Court: Well, he said that before.

Mr. Field: If the Court please, these questions are quite leading.

The Court: Yes.

A. Well, I might sum it up this way: There is absolutely no question, and Mrs. von Moltke pled guilty without reliance upon any conditions or anything that Mr. Babcock may have promised her at that time.

Q. (By Mr. Fordell): Did Mrs. von Moltke plead guilty on that occasion?

A. She did not.

Q. Did she express to anyone in your presence why she had changed her mind?

A. Well, her husband saw her then some time while this was—he saw her in the Marshal's office. And the conversation between Mr. von Moltke and Mrs. von Moltke was private. I did not hear it. After it was over with,—it was a fairly lengthy conversation—she had decided not to plead guilty, and she was taken back to the Wayne County Jail.

Q. Did she state that her husband had told her that she should get a lawyer?

A. I cannot recall that.

Q. Were you present when she was brought to Mr. Babcock's office the second time?

A. I don't think I was.

Q. Were you present when she was taken before Judge Lederle to enter a plea of guilty?

A. To the best of my recollection, I was not up in the front of the court room; in other words, I was up-

stairs, and I had heard that this arraignment was going to be made. In fact, Mr. Collard and I think the Deputy Marshal had gone over and got her, and I walked into the back of the court room in time to hear the arraignment, but that again is the best of my recollection.

Cross Examination

By Mr. Field:

I am an attorney by profession. I have been practicing law since 1931. I am a graduate of the University of Wisconsin. I was an attorney, and had had practical experience as an attorney for ten years before I became associated with the Federal Bureau of Investigation. After I and my associate members of the Federal Bureau of Investigation had arrested Mrs. von Moltke, we took her to the Federal Building. There she was fingerprinted and photographed and a doctor examined her.

Q. What form did the interrogation take? Just how was that done?

A. Well, Mr. Collard and I were seated at a table with Mrs. von Moltke, and we had a stenographer in the room, and we asked her questions which she answered. The stenographer of course was recording everything. The questioning on the first morning I do not know the exact time it started. It was probably 10 or 11 o'clock, or something like that. We stopped at lunch time. Mrs. von Moltke had lunch. Mr. Collard and I reviewed the notes that the stenographer had written up. In other words, we changed stenographers, so that one would take for a half hour, and then another one would take, and we would start questioning again in the afternoon probably one or 1:15. There is a log there that gives the exact times just exactly what went on.

Q. You kept a record?

A. A record was kept of every minute that was spent in that room.

Q. I don't know whether you testified or not by what authority you arrested Mrs. von Moltke.

Mrs. von Moltke was arrested under a presidential warrant as a dangerous alien enemy.

Q. And was she the only one that was arrested on presidential warrant in this case?

A. Mrs. Leonardt was also arrested on the same type of warrant.

Q. And the rest of the defendants were arrested how?

A. I believe that all of the other defendants were arrested on criminal warrants. I am not quite sure of that.

Q. Then after this questioning in relays, if I am not misrepresenting what you said, Mrs. von Moltke would be taken to the Immigration and Detention Home, would she not, for the night?

A. I do not quite understand what you mean by questioning in relays.

Q. I have—

The Court (interposing): I think he misunderstands what you said. The relays were the stenographers, not the agents.

Mr. Field: Well, perhaps I had better ask about that.

Q. (By Mr. Field): Did more than one agent of the Federal Bureau of Investigation interrogate Mrs. von Moltke immediately after her arrest, and for several days following?

A. No; Mr. Collard and I were working together. He might ask a question; I might ask one; I might ask 15; and Mr. Collard none. It all depended.

Q. And then you would have more than one reporter taking a transcription of the examination. Is that correct?

A. Not at one time.

Q. No; but in relays?

A. The reason we were doing that was so that the work—everything could be written up, so that during the noon hour when Mrs. von Moltke was eating, and resting, we could go over the testimony, all the questions that she had answered in the morning, and the same thing would happen at approximately 3 in the afternoon, or 3:30, and approximately 6 to 7.

Q. In the evening?

A. In the evening, yes. In other words, we always had stuff to work on while she was eating and resting.

Q. And did you advise Mrs. von Moltke of any charge that had been made against her other than she had been arrested on a presidential warrant as a dangerous enemy alien?

A. Well, at that time there was no other charge against her. I had no right to advise her of anything, except that she had been arrested under a presidential warrant.

Q. And did you advise her as to her rights to have legal representation in that proceeding?

Mr. Fordell: Well, I object to that. That is not important in this case.

The Court: No. And further, she was not entitled to it.

Mr. Field: We concede that.

The Court: Then why ask him about it?

Mr. Field: Well, the point is, as to this petitioner, if she was advised at that time that she was not entitled to have legal representation, how would she know later after she was handed this document called the indictment?

The Court: Well, you are arguing that now. Do you wish to argue it? She was told by two judges that she was entitled to counsel. Go ahead.

Q. (By Mr. Field): Was Mrs. von Moltke anxious to see her husband or her child or children during the time that she was held for examination by you and Mr. Collard?

A. Yes.

Q. And was she held in what is called incommunicado?

A. I don't know what you mean by "incommunicado".

Mr. Fordell: Well, I object to it, as it is not material.

The Court: The objection is sustained. You are speaking of the time she was held under the presidential warrant?

Mr. Field: Yes, your Honor.

The Court: All right.

When the indictment was delivered to Mrs. von Moltke, I was not there. She did not discuss the indictment with me. She asked me to explain it to her. I presume she

knew at that time that I was a lawyer. I believe to the best of my recollection my exact words were these. I said: "Mrs. von Moltke, I am not a criminal attorney, and I do not want to attempt to explain this indictment to you." And I believe that I also told her that she should either have her attorney, or the United States Attorney explain it to her. Mr. Collard was there at that time.

Q. And did Mrs. von Moltke appeal to Mr. Collard to explain the indictment to her?

A. Yes.

Q. And did he explain it to her?

A. I believe that he explained it to her.

Q. And do you recall the substance briefly of his explanation?

A. I do not.

Q. Do you recall whether he gave any illustrations?

A. He used some illustration in explaining the indictment. I do not recall what the illustration was.

Q. Did he explain what was meant by conspiracy?

A. I believe he did. I do not recall whether Mr. Collard used the example of a rum runner. That may have been the example; and it may not have been, as far as my recollection is concerned. I do not recall whether Mr. Collard made any statement to Mrs. von Moltke about himself being a lawyer. I don't know whether he is a lawyer or whether he is from Texas.

Q. Did you understand the explanation that was given to Mrs. von Moltke?

Mr. Fordell: I object to that. That is not important in this case.

The Court: No, I think not. The witness may not be as bright as Mrs. von Moltke.

The Court: Your objection is sustained.

Q. (By Mr. Field): Mrs. von Moltke did not attempt to influence you to obtain a lighter sentence for her, did she?

A. No, she did not. I think she understood quite clearly I had no powers along that line.

Q. Would it be possible for Mrs. von Moltke not to know whether she was innocent or guilty?

Mr. Fordell: I object to that.

The Court: The objection is sustained.

Q. (By Mr. Field) Do you recall Mrs. von Moltke expressing to you a concern of whether or not a plea of guilty on her part would bar her husband from teaching at Wayne University?

A. I do not remember that ever coming up.

Q. Is it because your recollection does not serve you, or is it because you do not think that she did ask you that?

A. I just don't remember.

Q. Well, now, I am not attempting to refresh your recollection on that particular point, but isn't it true that Mrs. von Moltke was concerned about her husband and his job and her children?

A. She was concerned about her husband and his job, and I don't know when he lost the job, or whether he was going to, or whether he would lose the job. She was worried about her husband and her children.

Q. And I believe she did speak of publicity, newspaper publicity?

A. Well, the publicity, in fact the first time I heard anything about publicity was this time that I conveyed this message to Mr. Babcock. I think I was present when Mrs. von Moltke appeared before Judge Lederle on her plea of guilty. I think I was in the fact of the court room; in fact, I am quite sure I was there. I know Mr. Collard was present. I don't know of anyone else. I think there were others present, but I don't remember. I believe that I do recall some of the things that were said by Judge Lederle.

Q. Do you recall the Judge stating to Mr. Babcock that he did not believe that he could accept a guilty plea because there was an appearance of an attorney in the file?

A. I do believe I remember that.

Q. And do you remember that there was some colloquy or conversation between the Court and Mr. Babcock on that point prior to the plea being accepted?

A. Yes, I do believe there was some discussion and I believe that Mrs. von Moltke also entered into it with the Judge.

I do not recall seeing Mrs. von Moltke signing a paper in Judge Lederle's court room. I think the court room was crowded. Mrs. von Moltke appeared before the Judge during a recess, as I recall it.

JAMES H. KIRBY was thereupon called as a witness on behalf of the Respondent, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fordell:

I was employed by the Federal Bureau of Investigation in the year 1943. To a certain extent I entered into the investigation and the prosecution of the petitioner in this case. At no time in my conversations with the petitioner did I make any promises to her to induce her to plead guilty or give her any advice as to what she should do with regard to pleading guilty in this case. Mrs. von Moltke referred to the incident of publicity which has previously been testified to in connection with Mr. Babcock, and that question was raised, and I did tell her that we as agents have no control over the press. She expressed the opinion that, or stated that she did not want an attorney on one instance, I believe. That was at the County Jail before she plead guilty, as I recall.

Q. Will you tell the Court what occasioned her to make that statement?

A. I believe it was after the time that she came to the Federal Building and had talked with Mr. Babcock; that was September 28, I believe, and had then decided not to appear before the Judge and plead guilty as Mrs. Leonhardt did at that time.

I believe some time after that, in connection with the publicity matter which she testified to, the conversation regarding the publicity as I recall centered about whether or not she should plead guilty, and I advised her at that

time or told her that that would be a question for her to decide, or her attorney, as we had understood from Mrs. von Moltke that Mr. von Moltke was interested in obtaining an attorney for her.

Q. And what did she say when you told her about consulting her attorney?

A. She, as I recall, jerked her shoulders, and said she was not interested; that she wanted to make up her own mind.

Q. Did she at any time tell you that her husband wanted her to have an attorney, and that she did not want an attorney?

A. I recall no other incident.

Q. (By Mr. Fordell) You have testified that you understood she had an attorney; is that true?

A. I was aware that she had talked with an attorney.

Q. How did you know that?

A. I believe she had advised me that one had come to the Wayne County Jail.

Q. Did she tell you whether she was going to retain this attorney or not?

A. No, I do not believe that she said definitely if she would.

I was not present when Mrs. von Moltke talked to Mr. Hanaway about entering a plea of guilty or when she talked to Mr. Babcock the first time with Mrs. Leonhardt. I was not present when she talked to Mr. Babcock in his office. I was present in court when she plead guilty.

Q. Will you tell the Court what questions were submitted to her by Judge Lederle, and what her answers were, to the best of your recollection?

A. As I recall, Judge Lederle did inquire as to whether or not she was represented by counsel, and subsequently he did inquire as to her plea, and she said—

Q. What did he ask her?

A. He asked her if she wanted to enter a plea of guilty.

Q. Did he ask her anything else before that question?

A. I do not have a complete recollection.

Q. You do remember that Judge Lederle asked her if she wanted to plead guilty?

A. To that effect, yes.

Q. And what was her answer?

A. That she did.

Q. Do you recall any other questions put to her by the Court?

A. As I recall, the Judge also asked if she were pleading guilty because she was guilty, and she responded in the affirmative.

Q. And any other question with regard to counsel?

A. I believe the Judge inquired whether or not the plea of guilty was upon the suggestion of any Government agent. I believe my recollection is that. And Mrs. von Moltke said no.

Q. Did she sign a waiver? Did you see what she signed at that time?

A. I have no independent recollection of Mrs. von Moltke signing any document or paper at that time.

Q. Were you in court at the time she entered the plea of guilty?

A. Yes, I was; I believe at the back, or to the side of the court room. I was not at her side, or in front of the court room.

Q. Well, after she was led out of the court room, did you at any time hear her state to any of the agents that she thought she had made a mistake in pleading guilty?

A. Not until sometime, as I recall, after the first of the year. I did not talk to her further on that day. I did not hear her make any such statement on that day. She did not request any leniency as a consideration for her plea. She was not promised any leniency at any time by me or anybody else in my presence to induce her to plead guilty. As I recall, it took approximately 10 or 15 minutes for her to get in the court room and enter her plea.

Cross Examination

By Mr. Field:

I am an accountant by profession. I was an accountant when I became associated with the Federal Bureau of Investigation. Principally I was assigned to the interrogation of Theresa Behrens who was a cellmate of Mrs. von Moltke at the Wayne County Jail. Emma Leonhardt was also in the same cell. All of our conversations with Theresa Behrens would not naturally be in the presence of Mrs. Leonhardt and Mrs. von Moltke. The cell block was probably a quarter of a block long, and there were individual cells running up the side, and Mr. Dunham and myself generally would talk with Mrs. Behrens for some time, and upon completion of our conversation with her we did on a number of occasions talk with Mrs. von Moltke and Mrs. Leonhardt. Those conversations principally related to Theresa Behrens, although on the one instance I do recall that the question of publicity was raised by Mrs. von Moltke, and similarly was an interest of Theresa Behrens. I do not recall that I made any statement to Mrs. von Moltke, or Mrs. Behrens, or Mrs. Leonhardt, in the presence of von Moltke, that other defendants were pleading guilty.

Q. (By Mr. Field) You have testified that Mrs. von Moltke commented on the adverse publicity in connection with this case, and the charges made against her, haven't you?

A. Yes, sir.

Q. And did she ask you that if all the other defendants pleaded guilty whether she would have the right to a trial?

A. I believe she did ask me that question on one occasion.

Q. And did you answer that question?

A. To the best of my recollection, my answer was that the question of the trial would be up to the United States Attorney's Office.

Q. And didn't you tell Mrs. von Moltke that you knew

of no reason why she should not be tried without the others?

A. Possibly I did, yes, sir.

Q. Did Mrs. von Moltke express concern for her husband, her child or children to you, and the effect of her predicament upon them?

A. Yes, I believe she did make comments in that regard.

Q. And did she tell you that she was hoping to do whatever would be best for her husband and her child?

A. Yes, I believe she did say that.

Q. Did Mrs. von Moltke ask you whether a plea of guilty on her part would result in her husband losing his job?

A. As I recall, Mr. von Moltke at that time was suspended by Wayne University, and I think if I recall correctly the point of Mrs. von Moltke's inquiry to me on that was whether or not a plea of guilty on her part would bar Mr. von Moltke from being re-employed, or having his suspension cut off.

Q. What did you answer to that, Mr. Kirby?

A. I believe I told her that was a matter, as far as her husband was concerned, between the University and himself, and the question of her plea was one that she had to decide, based upon her own feeling of guilt or innocence.

Q. I see. And did Mrs. von Moltke ask your advice regarding the indictment?

A. No, sir.

Q. Did she discuss the indictment with you?

A. Prior to the time that she plead guilty, I would say no, sir.

I have been having some difficulty to recall whether I was in the rear of the court room, or to one side at the time Mrs. von Moltke pleaded guilty. I cannot recall seeing Mr. Hanaway there. Mr. Collard was there, I believe. I cannot recall anyone else. I have no definite recollection as to whether or not Mr. Dunham was there on that day or not. Mr. Babcock was there. He was immediately before the bench, and I believe Mrs. von

Moltke was standing in the front of the court room also. Mr. Collard was before the court, also, as I recall. I recall no discussion particularly concerning Mrs. von Moltke's eyesight.

Q. What did Judge Lederle say with respect to there being an attorney in the case who had entered an appearance, if you recall?

A. The extent of my recollection there is principally that he inquired if counsel was present for her, and I recall nothing further, nothing that would indicate anything further along that line.

Q. How long did the discussion between Mr. Babcock and Judge Lederle concerning the attorney in the case take, to the best of your recollection?

A. A matter of not more than five minutes.

Q. And were you there at the beginning of the proceedings, that is to say, did you get there before Mrs. von Moltke went before the court?

A. Yes, I believe I did.

Q. And you stayed until it was ended. Is that correct?

A. I returned to the FBI office on the 9th floor immediately after her plea was entered, and accepted.

E. BERT COLLARD, JR., was thereupon called as a witness on behalf of the Respondent, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fordell:

I was employed by the Federal Bureau of Investigation in the year of 1943 during the time the proceedings initiated against the petitioner in this case were in progress. I did not at any time make any promises to her to induce her to plead guilty in this case, or exact any conditions as a basis for her plea of guilty.

Q. Did she at any time ask you for advice in the matter?

A. Yes.

Q. Did you know whether she had an attorney or not?

A. I knew that an attorney had visited her, yes, sir.

Q. Did she ever discuss with you as to whether she should have an attorney or not? Or let me withdraw the question, and put it this way: Did she ever request to you that an attorney be retained for her?

A. No, sir.

Q. Did she ever state to you whether she wanted an attorney or not?

A. As I recall it, she said that she did not want an attorney.

Q. Did she make that statement on more than one occasion?

A. Yes, as I recall it, she did.

Q. How often would you say?

A. As I recall, I only saw Mrs. von Moltke twice before she plead guilty, and I think on both of those occasions she mentioned something about the attorney.

Q. Well, did she ever ask you whether she should plead guilty or not guilty?

A. Yes, I believe that she did ask me that question.

Q. More than once?

A. Yes, I believe on both the occasions that I talked to her.

Q. And what did you say to her about that?

A. I told her that was a matter strictly for her, and for nobody else.

Q. And what did she say?

A. I just cannot remember what answer she made.

Q. Well, tell us what conversations you had with her during this time—conversations in which the word "attorney" was mentioned?

A. As I recall it, to the best of my ability, now, Mr. von Moltke wanted Mrs. von Moltke to have an attorney. In fact, he went so far as to send one or two gentlemen over to see her. But in all the conversations that I had with Mrs. von Moltke concerning the attorney, it was her idea that she did not want an attorney, and that she wanted to just go ahead without an attorney, and do whatever she was going to do without one.

I was not present when she was taken to the Marshal's office, and where Mr. Babcock talked to her, but I was present the second time on October 7, 1943 when she was brought into Mr. Babcock's office. As I recall, I talked to Mrs. von Moltke at her request on October 2, and October 4, of 1943. Right now I cannot remember why she came over on October 7, but there was either a call from the Marshal's office, or a call from the matron, over at the County Jail. As you recall, she was the Marshal's prisoner, and was not a prisoner of the FBI. It has been so long ago I don't remember whether I went upstairs on the 6th floor; that was the women's cell, and talked to Mrs. von Moltke before she came down to get in the car to come over to the Federal Building, or whether I just sat in the car and the Marshal went in to get her. She was being taken to Mr. Babcock's office because she had stated she wanted to enter a plea in the case. There was, I am sure, quite a lengthy discussion there in Mr. Babcock's office between him and Mrs. von Moltke, the gist of which I cannot remember what was said, and who said what. But I know that Mrs. von Moltke said that she wanted to plead guilty. She did not state to Mr. Babcock at that time that she wanted to plead guilty, even though she was not guilty. I am absolutely positive of that. She did not state to Mr. Babcock that she wanted to plead guilty to cooperate, nor did she at any time tell me that she wanted to plead guilty in order to cooperate with the government. She told Mr. Babcock she wanted to plead guilty, as I understood it, because she was guilty. That was the reason she came over there. She did not express any conditions on which she based her plea of guilty. Mr. Babcock said that Judge Moinet, the Judge that was handling the particular case, was indisposed for one reason or another that particular day, and it would be a lot more convenient maybe to wait until another day to enter a plea, but she said not, that she was over there that day, and she wanted to enter it right then, so he said that probably arrangements could be made with some other judge to accept her plea of guilty. Mr. Babcock told Mrs. von Moltke that the plea

of guilty would be accepted only on the basis that she was guilty. That is just all there was to it. Then Mr. Babcock made the arrangements, and we proceeded down to Judge Lederle's court.

Q. Do you recall what questions Judge Lederle put to her?

A. I know he asked her a number of questions. I just cannot recall now.

Q. Can you recall what some of those questions were?

A. Oh, yes, I think Mrs. von Moltke mentioned this afternoon that he asked her if she was guilty because she was guilty, and she said she was, and asked her if any threats or promises had been made to her, and she said no. He asked her if she understood the nature of the charges against her in the indictment; as I remember, he had an indictment there. She said that she did.

Q. Did he ask her anything else?

A. As I remember, he went to considerable pains to ask her the questions that he should have to guarantee the rights that she had, and to convince himself, since he was not the judge handling the case, and I think he told her then before she ever plead guilty, I believe, one of the things he said was, if he would accept her plea, and if the case would be referred to Judge Moinet for sentence, and that he would have nothing to do with it.

Q. Did he ask her whether she wanted counsel or not?

A. Yes, as I remember he did.

Q. And what did she say?

A. She said no, she did not.

Q. After she was led out of the court room, did she at any time while being taken up to your office, or to the county jail, indicate to you, or to anyone else in your presence, that she felt that she had made a mistake in telling Judge Lederle that she knew what the charges were, and that she was guilty?

A. No, she did not.

Q. There has been some testimony here that she requested you to explain this indictment to her.

A. Yes.

Q. Did you try to explain it to her?

A. Yes, as I remember, I did.

Q. Did you know whether she had read the indictment at that time?

A. Yes, I am sure she had.

Q. What did you tell her?

A. The first time that I talked to Mrs. von Moltke was October 2. She could not correspond with our office, but she would tell the matron, and the matron would call our office, or the Marshal's office, and I know on this particular day I received a call that Mrs. von Moltke would like to see me in the county jail, and I went over to see her.

Q. Well, in explaining this indictment to her, what explanation did you give her?

A. I just tried to explain it the best I could.

Q. You read the indictment to her?

A. She had read it. She had her copy of the indictment, and had the various counts that pertained to her, she had those circled; I tried to discuss them with her.

Q. Was that afterwards that you told her to see her attorney as to what she should do?

A. As I recall, I told her that she could see an attorney at any time, that that was her privilege, as I recall it.

Cross Examination

By Mr. Field:

(Whereupon a paper was marked Petitioner's Exhibit No. 1.)

I am an attorney. I have practiced law. At no time was I a district attorney in Texas or in any way connected with law enforcement agencies in Texas. I practiced law in Texas. I as a member of the Texas bar, and the Kansas bar. In 1943 I was working for the FBI. I don't know whether I was in principal charge of the case against Mrs. von Moltke. That was my job. I arrested her on a presidential warrant and Mr. Hanaway and I examined her for four days following her arrest. I was not present when the indictment was served upon Mrs.

von Moltke. I saw her, I believe, on October 2 after she had received the indictment.

Q. What, if anything, did you say to Mrs. von Moltke to indicate to her that the indictment was a new proceeding?

A. Was a what?

Q. A new proceeding, and not a continuation of the presidential arrest?

A. Would you kindly ask that again? I do not quite see what you are trying to get at, sir.

(Question read.)

A. As I recall it, when I first went over to the County Jail at Mrs. von Moltke's request on October 2, she had the indictment, and I explained to her that she had been indicted by the Federal Grand Jury, and I explained to her that technically she had been re-arrested on that indictment, and she told me that she had been arraigned; I found out about that, too. I was not present at the time. So if that is what you mean by "new procedure," I did tell her that.

Q. And did she say that the indictment puzzled her?

A. I don't know as she said it puzzled her, but she wanted me to discuss it with her, which I proceeded to do.

Q. And did you bring over a copy of your own?

A. I am sorry; I could not tell you whether I did.

Q. In your direct examination you said Mrs. von Moltke had her copy.

A. It seems to me that she did, yes.

Q. And did you have your copy?

A. Well, now, I am sorry, I could have had, and I could not have had. I just do not remember. I am sorry.

Q. Where did you talk with Mrs. von Moltke in the County Jail about the indictment?

A. As I remember, the matron gave us her little office there to discuss whenever we talked.

Q. And about how long did that discussion take?

A. I imagine several hours. You just cannot talk to Mrs. von Moltke for a few minutes. It is always a several-hour proposition.

Q. Mr. Collard, I will show you a number of papers stapled together here, marked Petitioner's Exhibit No. 1, and I will ask you if that is the copy of the indictment that Mrs. von Moltke had at the time you discussed this matter with her on October 2, 1943, at the Wayne County Jail?

A. I am sorry, I see nothing on there that I could identify that by.

Q. You are unable to say?

A. I am unable to say if that was her's or mine or whose it is.

Q. Well, does that appear to be a mimeographed copy of the indictment in Mrs. von Moltke's case?

A. Yes; I mean that is what the printed matter says, so I am sure that that is what it is.

Q. You have seen this before, haven't you?

A. I have seen several of the indictments, yes, sir.

Q. Well, you stated on your direct examination, I believe, that Mrs. von Moltke had some of the paragraphs of the indictment circled. Do you recall that as a fact?

A. I was trying to testify only to facts.

Q. I mean, do you now recall that as a definite fact that you definitely remembered?

A. I definitely remember that she had some mark of some type indicating the ones that had her name mentioned in them; whether it was circled, or a parenthesis, or how it was, I do not just remember, but I know there was some distinctive mark made.

Q. Did you explain to Mrs. von Moltke the nature of a conspiracy?

A. I attempted to, yes.

Q. To the best of your ability?

A. Yes, sir.

Q. And did you spend some time on that particular phase of your explanation?

A. I do not recall, but we probably did.

Q. And did you during that discussion use a illustration about a rum runner?

A. Well, I heard Mrs. von Moltke say that, and since she did I have been trying to recall, and I cannot remember such an illustration.

Q. I see.

A. But it is quite possible that Mrs. von Moltke's memory is better than mine, and I may have used such an illustration.

Q. And did you question Mrs. von Moltke at that time concerning the charges that were made against her in this indictment?

A. No, not question her concerning those; I did not believe it necessary; we had done all of that prior, and had a signed statement from her of twenty some odd pages.

Q. 17, wasn't it?

A. It could be. I do not just remember.

Q. Did you ask Mrs. von Moltke whether she was questioned with Carlos Galino DaSilva?

A. On which occasion?

Q. On October 2.

A. I don't remember; but I am sure that I probably did not.

Q. You did not?

A. I know that we discussed that from October 24 to October 25, 26 and 27.

Q. You don't mean October?

A. I mean August; during the time we questioned Mrs. von Moltke we talked about—

Q. But you did not talk about Mr.—I don't know whether he is Mr. or not, but DaSilva with Mrs. von Moltke on October 2, 1943, that you remember?

A. I just cannot say one way or the other, whether we did, or whether we did not. I do not recall.

Q. Did you in any way explain, or attempt to explain to Mrs. von Moltke the meaning of the word "feloniously"?

A. I cannot remember her asking that, but if she did ask me, I probably tried to explain it to her; but whether that was one of them, I just don't remember.

Q. And are you familiar with the definition of a felony under the federal law?

Mr. Fordell: Well, I don't think this questioning now is material in this case, what he is familiar with.

The Court: I think not. There is no testimony that she asked that. If there were, then you might be permitted to ask him if he knew, but this is not an occasion to get the witness' general knowledge of the law.

Q. (By Mr. Field): Did Mrs. von Moltke ask you the difference, or to define the difference between a combination, a conspiracy, and a confederation?

A. I am sure I don't know whether she asked me such a question or not.

Q. You don't recall that?

A. No, I don't believe I do.

Q. Did you discuss with Mrs. von Moltke whether she introduced one Edward Arndt to Grace Buchanan Deneen?

A. This is on the occasion of October 2?

Q. October 2, 1943.

A. I will have to answer that by saying that if that is one of the Overt acts involving Mrs. von Moltke, then I did discuss it with her.

Q. And did you explain to Mrs. von Moltke the nature of an Overt act?

A. Well, if she asked me, I probably tried to, but whether she asked me or not I just don't remember.

Q. And did Mrs. von Moltke ask you whether merely conferring with people who later turned out to be guilty of criminal acts would also make her a criminal, and guilty of criminal acts?

A. I do not just recall that particular question. It is quite possible.

Q. As the final result, Mr. Collard, of your conference with Mrs. von Moltke, at the County Jail on October 2, 1943, did you come to any conclusion about what she should do or what she should not do?

A. No.

Q. With reference to the charge?

A. No.

Q. Did you indicate to her one way or the other what would be the proper course for her to pursue?

A. No, I did not.

Q. (By Mr. Field): Do you recall making an affidavit

in connection with Mrs. von Moltke's attempt to withdraw her guilty plea?

A. Yes, I did.

Q. And do you remember stating in that affidavit that Mrs. von Moltke asked you if she could make a statement at the time sentence would be imposed upon her, and that you advised her that she would have an opportunity at the time sentence was imposed to make a statement to the court, and that thereafter she began to prepare a lengthy statement which she apparently intended to make to the court at the time of imposition of sentence. Do you recall making that statement?

A. I take it you have just read that from the affidavit?

Q. Yes, sir, I have.

A. If it is in the affidavit, it is a statement I made, yes, sir.

Q. And do you recall specifically now the incident where you advised her that at the time of sentence should would have an opportunity of making a statement to the court?

A. Well, I am sure that I must have said that, if I made that affidavit to that effect. I am sure that that is what I said to her, yes, sir.

Q. But do I understand you to say now that you have no independent recollection of it now other than the fact that you did make the statement in an affidavit?

A. Well, I may have the independent recollection now, and I may not. I have read that affidavit since I arrived back here, and that has kind of helped to refresh my memory on it, if that is what you mean. I may not quite understand your question. Is that what you mean?

Q. Yes, sir. Now, you mention also in your affidavit that Mrs. von Moltke discussed with you her desire to change her plea of guilty, and that you advised that it was her privilege to do so, and informed her of the proper way to get in touch with the United States Attorney?

A. Yes.

Q. You did that, didn't you?

A. Yes, sir, I did that.

Q. And you told her that was her privilege to change her plea?

A. Yes, I certainly did.

Q. (By Mr. Field): At the time that Mrs. von Moltke appeared before Judge Lederle, do you recall a discussion between Judge Lederle and Mr. Babcock regarding the fact that an attorney had filed an appearance for Mrs. von Moltke and Mrs. Leonard in the case?

A. I am sorry, but I just do not recall that.

Q. You do not recall that?

A. It has been discussed here, and I am sure probably took place, but that happens to be one of the things I just cannot remember at all.

Q. And do you confirm the fact that there was a trial in process at the time that it was interrupted for this plea to be made?

A. Yes, I have a little different idea as to what kind of a trial it was, but I know there was one.

Q. Was it a so-called Jehovahs witness trial?

A. No; it was a trial concerning a white Russian sect, that grew long whiskers and long hair, and came in to defend themselves.

Q. And were there quite a few people in the court room?

A. It was not jammed, packed, but there were a number of people there, yes, sir.

Q. Well, how, one other question, Mr. Collard; you say in your affidavit, and I will read this now as follows:

"That as far as this deponent is informed and believes, her action in entering a plea of guilty to the indictment on October 7, 1944, was her free and voluntary act made after due consideration with a full and complete understanding of the charge made against her in the indictment in the instant case."

Is that correct?

A. Yes, sir.

Q. And when you say "full and complete understanding of the charge made against her in the indictment",

do you refer to the fact that you explained the indictment to her?

A. I simply refer to the fact that as far as I knew and could understand, she understood thoroughly what the whole thing was all about, yes, sir.

ROBERT S. DUNHAM, a witness called on behalf of the Government, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Fordell:

I was employed by the Federal Bureau of Investigation during the year 1943 and had occasion to talk to the Petitioner in the Wayne County Jail while the prosecution was pending against her. I didn't question her regarding her implication or not implication in the case. It was more of a friendly visit. During the times I talked to her I did not make any promises of any kind to her to induce her to plead guilty to the charges pending against her. I talked to her from the time she was incarcerated in the County Jail from the early part of September I think it was, 1943, until along in March, 1944. I visited her and talked to her approximately twenty times maybe, more or less. Prior to the time she entered a plea of guilty, my purpose in visiting the Wayne County Jail was the interrogation of Theresa Behrens, another defendant in this case. During the visits, at the conclusion of the questioning of Mrs. Behrens, I used to become engaged in conversation with the three female prisoners there, among whom was the Petitioner, and I talked with her I imagine four, five or six times prior to her entering a plea of guilty. On one of the early visits, after the indictment had been delivered to her, she made an inquiry of me as to the nature of the charges or what I understood them to be. At that time I told her I couldn't explain the indictment to her or talk to her about it, that I would advise her to discuss the matter with an attorney. Then I asked her if she had an attor-

ney. I knew at that time Mr. Okrent had visited the jail. She told me she had discussed this with an attorney. She told me her husband was very determined she should have an attorney, that she should not plead guilty without the advice of an attorney. In my discussion with her, from the statement made to me by her, she told me it was a problem she wanted to decide herself. She didn't feel that discussing the matter with Okrent or any other attorney would be of much assistance to her, because her consideration was not only for herself, but for her husband and family. I don't know how many times her husband visited her, but I do know a number of times I talked with her, she seemed concerned over the fact that each occasion it was discussed while with her husband—she said it was an unpleasant visit and she didn't look forward to the part of the visit when they told her he wanted her to have an attorney, because he wanted her to have advice before she did anything. She was determined in her own mind to make up her own mind, as she told me.

Q. Did you bring her husband to the Federal Building on the occasion when she was brought to the United States Marshal's office with Mrs. Leonhardt?

A. Yes, when she was brought to the marshal's office with Mrs. Leonhardt, and she was in the Marshal's office when they arrived and talking, both of them, and both stated they were over here to plead guilty. Mrs. von Moltke said she would like to talk with her husband before she decided to do anything. I had talked to her in the jail and I knew her husband's interest in the matter, and I knew how she felt about it and I told her I would get her husband and she could talk to him before she entered a plea of guilty. I went to the establishment where her husband was working and notified them of her desire, and they in turn passed the word along to him. He came over to the Marshal's office and talked with her. I wasn't there with her when her husband came in. The Marshal made arrangements to talk to her husband alone. When she returned to the place where Mrs. Leonhardt was she said, "I have decided to plead guilty." I don't

know whether it was at that time Mrs. Leonhardt said, "I am going to plead guilty any way," or whether it was before that, but Mrs. Leonhardt entered a plea of guilty, and Mrs. von Moltke was returned to the jail.

Cross Examination

By Mr. Field:

I made an affidavit in answer to Mrs. von Moltke's plea to withdraw her plea of guilty in August of 1944. At that time these matters were quite a bit fresher in my mind than they are now.

Q. I want to call your attention to one paragraph which I will read from your affidavit: "That Deponent," meaning you, "has no recollection of said Defendant," meaning Mrs. von Moltke, "ever saying to him—between October, 1943 and Christmas of 1943, that she was changing her plea to one of guilty in order to avoid a trial and the consequent newspaper publicity." Do you recall making that statement in your affidavit?

A. I must have made it; I recall that is the affidavit. You see, I talked with her on a number of occasions after she had entered a plea of guilty, and she was concerned about newspaper publicity, but I don't recall that she ever made a direct statement of that kind to me.

Q. Mr. Dunham, did Mrs. von Moltke ever express to you a concern about her husband losing his job?

A. Yes, she did.

Q. Did Mrs. von Moltke ever express to you a concern over the welfare of her diabetic son?

A. She did to the extent—I wouldn't say I took a personal interest, but I took an interest to the extent I made arrangements for the son to be cared for.

Q. Was this before the plea of guilty?

A. Yes, she did.

Q. You were aware of the fact weren't you, Mr. Dunham, that after Mrs. von Moltke was arrested, that Mr. von Moltke was doing what he could to take care of the child?

A. Yes. It was my understanding that the boy—at the time of her arrest, during the early time of her incar-

ceration in the jail, when I talked with her, the boy was in a home of friends of theirs, but something transpired there and they didn't wish to care for the boy and they had to place him somewhere.

Q. Did Mrs. von Moltke convey to you the idea that if her husband lost his job as a result of newspaper publicity in connection with this case, that that would affect the welfare of the child, and caused her concern?

Mr. Fordell: I object to it. I don't think she was excited about her family or personal matters—personal matters of her own have no bearing.

Mr. Field: As to whether she waived her right to counsel intelligently. Everybody that is incarcerated have something to be excited about.

The Court: It may be answered.

Mr. Field: Would you repeat the question, Mr. Reporter.

(Question read.)

A. She was fearful unless—

Mr. Fordell: Was there a ruling?

The Court: I said it may be answered. You have referred to it a good many times. When did her husband lose his job?

Q. (By Mr. Field) Do you know, Mr. Dunham?

A. I don't know. He was suspended, as I recall it, a few days to a week after her arrest, and suspended pending the outcome, but I don't know when they definitely told him his services were no longer required.

Q. (By Mr. Field) Did Mrs. von Moltke express to you her belief that her husband would be unable to get another job if he lost the job at the Wayne University, if the publicity continues?

Mr. Fordell: I object to the question.

The Court: Objection sustained.

Mr. Field: Exception. I think that goes to the very heart of this matter.

The Court: All right, you have your exception. Go on with the questions.

Q. (By Mr. Field) Well, what then before the plea

of guilty seemed to bother Mrs. von Moltke, other than the concern about publicity?

Mr. Fordell: I object to that. She might have been concerned about a lot of things. The only important thing is knowingly and intelligently pleading guilty to the charges pending against her at that time. She may have done that in spite of the fact she was concerned about many other things.

The Court: This is undoubtedly true. I assume anyone in jail is disturbed about their family affairs. It isn't extraordinary, but a most human condition. Undoubtedly she was disturbed, as anyone under like circumstance would be. It is not at all abnormal. I have allowed you to go into that a great deal, describing the conditions that existed. In the case in which a woman is incarcerated and charged with a crime, if she didn't worry over the consequences of her act, it would be utterly inhuman. It isn't extraordinary, anyone out of the ordinary routine of life, to react in that manner. You have already made quite an extensive record on that, so don't go into that any more.

A. I visited Mrs. von Moltke at the County Jail five or six times between the time she was arraigned on the indictment and the time she pleaded guilty. Mrs. von Moltke was endeavoring to get advice or information from me, or opinions, and yet she realized I couldn't give her opinions, but she tried in the best way she could to get some idea. I am not a lawyer. I have not had legal training. I have had legal training with the Federal Bureau of Investigation and I know something about criminal laws and criminal procedure. Mrs. von Moltke knew I was with the FBI. I don't know what else she thought.

Q. Was the fact discussed that others indicted in connection with these charges had pleaded guilty, or were going to plead guilty, on your visits with Mrs. von Moltke?

A. Mrs. von Moltke and the other two women prisoners in the jail were allowed to read the newspapers and whatever periodicals they wanted. They avidly read every newspaper which at that time carried news of what legal

processes were in order and what the newspapers speculated on, and on the basis of that she made many insinuations.

Q. And those facts reported in the newspapers, concerning her case, were discussed with you?

A. Yes, sir.

Q. In your presence?

A. Yes.

Q. You were asked certain questions by Mrs. von Moltke and the other women in the cell block?

A. That is right.

Q. Did Mrs. von Moltke ask you what her chances were in case she went to trial in this case?

A. Yes, she did.

Q. Did you advise her on that?

A. I told her I couldn't give her any answer. She went so far as to ask me if I could cite a similar case and advise her what the outcome was and I told her I could not.

I was not present at the time a member of the Federal Bureau of Investigation explained the indictment to her or at the time any agent of the Federal Bureau of Investigation explained or attempted to explain the indictment to Mrs. von Moltke. I read the indictment when it was prepared and after it was returned.

Q. Did you discuss with Mrs. von Moltke the particular so-called overt acts in which her name was mentioned?

A. When you say the word "discussed", that is a big word, it covers a lot of territory. She mentioned to me overt acts which she was involved in, four or five, whatever it was.

Q. Did she ask you whether in your opinion the statement in those paragraphs of the indictment made her guilty of conspiracy?

A. No.

Q. Did she ask you for an illustration of a similar case which might be helpful to her?

A. Yes.

Q. Did you give her one?

A. Let me change that to say that she didn't ask for an illustration as a similar case concerning the indict-

ment, it was a general over-all picture of what the effect would be and I told her I couldn't give her one.

Q. What was the principle purpose of your visits to the County Jail after Mrs. von Moltke was arraigned and before she pleaded guilty?

A. We were at that time very much interested in information which Mrs. Theresa Behrens had, which had not been fully revealed to us, and my purpose in the visits was to talk to Mrs. Behrens.

Q. Did you talk to Mrs. Leonhardt also?

A. Yes.

Q. Did she plead guilty?

A. Yes.

Q. Did Mrs. Behrens plead guilty?

A. Yes.

Q. Did you discuss with Mrs. von Moltke the possibility or probability of Dr. Thomas pleading guilty?

A. I believe she asked me on a number of occasions in that regard. I believe she asked me if I knew whether Dr. Thomas would plead guilty or not, and I told her no, because I didn't know.

Q. Did you get the impression that Mrs. von Moltke was looking for help and information?

A. My impression was that Mrs. von Moltke asked me, and the manner in which she did, that she realized that I couldn't give her an answer, and she didn't want to embarrass me to the extent to ask me direct questions. I told you I finally came out and told her she should discuss this with an attorney, and she told me her husband sent Mr. Okrent. My impression of Mrs. von Moltke was that she was endeavoring to make up in her own mind what was the best thing to do, and didn't wish to discuss the matter with either her husband or the attorney.

Q. Why was it, Mr. Dunham, then that she insisted on seeing her husband on the first day she went to Mr. Babcock's office?

Mr. Fordell: I object to that as a conclusion.

The Court: Objection sustained.

Q. Were you present at the time when Mrs. von Moltke was arraigned, Mr. Dunham?

A. Yes. With Mrs. Leonhardt.

Q. That arraignment took place before Judge Moinet?

A. Yes.

Q. Did Mrs. von Moltke have an attorney at that time?

A. An attorney was appointed in Court at that time.

Q. Was there a trial in progress at the time Mrs. von Moltke came into Judge Moinet's court room?

A. I don't recall.

I was present in Mr. Babcock's office the time Mrs. von Moltke's husband was there and she decided not to plead guilty. I was not there on October 7, 1943. I was standing almost outside of the rear door of Judge Lederle's court room when Mrs. von Moltke pleaded guilty. I could see Mr. Collard standing beside her. That is the only other agent I saw. I was notified that Mrs. von Moltke was pleading guilty and that was how I happened to be in the court room.

Q. Did Mrs. von Moltke ask you whether if all the other defendants in this case pleaded guilty, that she would still have the right to have a trial?

A. She may have asked me that. I don't have a definite recollection, but she might have.

Q. Did you imply or suggest to Mrs. von Moltke that the Government had a very strong case against her?

A. No. I particularly avoided discussing that with Mr. Von Moltke. I avoided discussing her involvement in this, because it was not my responsibility or concern.

Q. Did you advise or suggest to Mrs. von Moltke that public feeling was running high in connection with the cases in which she was involved?

A. No.

Q. Did you advise or discuss with Mrs. von Moltke probation procedure?

A. She inquired of me one time, and I don't recall when this was, what the Probation Office was and what the Probationary officers did, and I believe I told her that the Probationary Officers conducted an investigation into her life and made a recommendation concerning his findings prior to sentence.

Q. Did you also give advise or discuss with Mrs. von Moltke the fact, if it was a fact, that she could in that manner bring to the attention of the Court any matters that she might wish to regarding involvement in the case?

Mr. Fordell: I will object to that.

The Court: Objection sustained.

Mr. Field: Exception.

The Court: Of course, if you know anything about the routine of probation, that is exactly what is done among innumerable other cases. The Court gets a statement of what the particular Defendant has to say about the charge.

Mr. Field: I am aware of that.

The Court: Her case would not have been any different.

Mr. Field: In this case we are attempting to show that Mrs. von Moltke was trying to tell that she was not guilty, even though she pleaded guilty, and through the probation officer was the only manner in which she could bring that to the attention of the Court.

Q. (By Mr. Field) Did you discuss with Mrs. von Moltke, or answering questions that she might have asked you, anything regarding immigration or deportation?

Mr. Fordell: I object to it, Your Honor. I don't think it is material in this case.

The Court: Well, go ahead and answer it.

A. Yes. She asked if I thought she would be deported at the culmination of these proceedings, whatever the outcome might be, and I told her that to the best of my knowledge the Immigration and Naturalization authorities would make that decision.

Q. Did you tell her the procedure by which that decision was reached?

A. No.

Q. Did you advise her that the Immigration Board has some discretion in matters of that kind?

A. No. I was not familiar with the proceedings myself.

Q. Did Mrs. von Moltke question you about her chances in case she was sentenced to prison, of being sent to a nearby prison?

A. I don't know whether she questioned me. I knew that at one time, when she was considering entering a plea of guilty, that that is one of the things she was concerned about.

The Court: We have gone into that.

Mr. Field: Not with this witness.

The Court: I know, but you are not going into the same thing with every witness. That is a very usual request. I have had it thousands of times. Naturally people want to be near their families. People who are to be incarcerated make that request to the Court. The Court has not anything, in itself as a Court, to say where they should go. He can make recommendations to the Attorney General's Office as to where the prisoner might go, and they usually comply with our request. That it was made is nothing unusual. Naturally people want to be near their families. So, don't go into that.

Q. Now, getting back to the discussion you had with Mrs. von Moltke about the effects of the publicity, or the possible effects of newspaper publicity attendant upon a trial, did she advise you that she wanted to avoid that if possible?

A. Yes. But not necessarily. I would like to clarify that. It was not necessarily the trial, but any specific legal action. It was just the general publicity that hurt her deeply.

Q. Did you get the impression that she was sensitive to publicity?

Mr. Fordell: I object to that. It is immaterial in this case whether she was sensitive or not. In this case it is whether she plead guilty on that particular day and whether she did it knowingly.

The Court: The objection is sustained.

Mr. Field: May I have an exception.

Q. (By Mr. Field) Now, Mr. Dunham, in the affidavit which you filed in answer to Mrs. von Moltke's leave to withdraw her plea of guilty appears this language, that nothing was ever said to said Defendant, Mrs. von Moltke, by this Deponent, yourself, or by any other said Agent of the Federal Bureau of Investigation, who ac-

accompanied him, that this Defendant's refusal to plead guilty would result in her being the only Defendant to pass trial, and that nothing was ever said to this Defendant by this Deponent as to the consequent newspaper publicity attendant upon the trial. Do you recall making that statement?

The Court: Why do you ask it?

Mr. Field: I am asking that because I want Mr. Dunham to—

The Court: Do you ask it for the purpose of impeachment? There is no contradiction in what he says on the stand.

Q (By Mr. Field) Do you recall making that statement?

A. Yes.

Mr. Fordell: I object to the question. I don't know the purpose of it. I don't think it is material in this case.

The Court: I don't think it is for the purpose of impeachment. There is no contradiction. You haven't told me yet, Mr. Field, what the purpose is.

Mr. Field: The purpose is to present to Mr. Dunham the apparent inconsistencies in his testimony.

The Court: There must be inconsistencies if you are presenting it for the purpose of impeachment. On the stand he has told what the Petitioner has said. Have you read the affidavit correctly? I have never seen it. He is saying what he said or didn't say. In the paragraph you read a moment ago—

Mr. Field: Let me ask Mr. Dunham a question.

Q. (By Mr. Field) Did you discuss with Mrs. von Moltke about newspaper publicity?

The Court: What do you mean by "discuss"? He said she asked certain things concerning it, and made certain statements concerning it. That is not a discussion. A discussion implies that both sides are taking part in talking about that topic.

Mr. Field: That is what I meant by discussion, both parties participating in talking.

The Court: All right.

Q. (By Mr. Field) Did you discuss that with her?

A. I wouldn't say that I discussed it with her, and as I recall it her concern over publicity, and what was evident of this concern to me, occurred after, and occurred at the time Dr. Thomas was being tried, which was January, 1944, which was long after she entered a plea of guilty.

JOHN W. BABCOCK called as a witness on behalf of the Government, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Fordell:

I was employed as Chief Assistant United States Attorney during the year 1943. I had charge of the investigation and return of the indictment, the matter of any pleas that were tendered and the final trial of Dr. Thomas in connection with the prosecution of petitioner and others. I had occasion to talk to the Petitioner in this matter. The first time I talked to her was on the day that Mrs. Leonhardt tendered the plea of guilty to the Court. Just the exact date, I don't remember. The conversation took place in the office of the United States Marshal, on the 9th floor of this building. My memory is not clear whether it was on that occasion, or on the occasion of the second conversation in my office that Mrs. von Moltke presented to me three conditions about which she was concerned. In the office of the United States Marshal she was resolving in her mind the question of whether she should or should not plead guilty, and finally advised me that her then decision was not to plead guilty. I had another conversation with her subsequently. As I say, either in the Marshal's office or in my office she said to me that she was concerned about the possibility of being deported at the conclusion of serving a term in a penitentiary. She was concerned about the possibility of newspaper publicity, and she was concerned about where she might be incarcerated. She wanted to know if I could assist her in keeping down newspaper publicity, if I could assist her in being incarcerated somewhere near Detroit,

and if I could assist her in remaining in this country. I told her that under any circumstances anything I might reply to her questions must not have any bearing whatsoever upon her decision to plead guilty or not plead guilty; that she would have to decide that for herself, on the basis of whether or not in her own conscience she had to say that she was guilty. I said nothing further about those conditions to her at that time. Later in that conversation she announced to me that her decision was to plead guilty. I then recounted to her the normal procedure in the court room, telling her that when you appear before one of the United States District Judges, the Judge would ask if she was tendering her plea as a result of any promise made to her, whether it was a result of any threats upon her or whether it was because she was guilty. That he would also ask her if she desired to have counsel appointed to advise her, and after I completed that explanation to her she said she had decided to plead guilty and shall I make arrangements to take her into the court room. Thereupon, after she had announced that decision to me, I told her then that so far as her problem of newspaper publicity was concerned that I could do nothing about it, that I had no control over the newspapers. So far as deportation was concerned, I could do nothing about that, because that is a question for the Immigration and Naturalization Service to determine, jurisdiction over which I had no connection. That so far as the place of incarceration was concerned, while I couldn't control that in any manner, I would, if she requested, write a letter of recommendation that her place of incarceration be near Detroit where her family might see her.

She did not at any time say to me "I wish to plead guilty in order to cooperate" or that she wanted to plead guilty even though she wasn't guilty. If she had done so I would not have taken her into the court room to make such a plea. Subsequently we proceeded to Judge Lederle's court room.

Q. Will you tell the Court what questions were submitted to her by Judge Lederle at the time she entered her plea of guilty?

A. I must say that I have no distinct recollection of those questions. Of course, I have in mind the normal procedure that is followed by every one of our very careful United States Judges, but for me to testify to that as a distinct recollection, I couldn't say.

Q. What is the normal procedure Judge Lederle and the other Judges follow?

A. I do recall distinctly on this occasion when Mrs. von Moltke had previously been arraigned, and without aid and advice of appointed counsel, stood mute, it was necessary the procedure be a motion to change her plea, and when Judge Lederle advised us he was ready to give this matter attention, I recall I informed the Court that this Defendant wished me to make a motion to change her plea from that of not guilty to guilty. Thereupon I recall the Court proceeded in the normal way. Now, the normal procedure is for the Court to ask the Defendant if the information given to the Court is correct, if the Defendant desires to plead guilty, and ask the Defendant if such plea of guilty is tendered by reason of any promises made to the Defendant, if such plea of guilty is made by reason of any threats made upon the Defendant, if such plea of guilty is their voluntary plea and made because the Defendant is guilty and if the Defendant desires to have counsel appointed by the Court. First of all, if the Defendant has counsel of his or her choosing, and if not, if the Defendant desires counsel appointed by the Court to advise the Defendant in connection with the matter. Upon being satisfied that the action tendered by the Defendant is free and voluntary, without promises or threats of any kind and because the Defendant is guilty, the Court will then accept the plea of guilty and proceed with further disposition of the case.

Cross Examination

By Mr. Field:

Q. Did Judge Lederle make any comment about the fact the file showed an appearance had been entered for Mrs. von Moltke and Mrs. Leonhardt?

A. I don't remember, sir.

Q. You don't recall a discussion between you and the Court concerning such an appearance?

A. No, I don't.

Q. Do you recall Judge Lederle at the beginning of those proceedings, that is, the proceedings that culminated in the guilty plea, stating that he couldn't accept the guilty plea unless the attorney was present?

A. No, I don't recall that.

Q. You don't recall any colloquy between you and the Court on that point?

A. No.

Q. Was there any court reporter in the court room at that time?

A. My memory is that there was.

Q. Do you remember whether there was a case in progress in Judge Lederle's court room when you first went into the court room?

A. I don't think so, Mr. Field. As I recall it, it was at recess time. I do not remember whether Mr. Collard was with me or Mr. Dunham or Mr. Kirby or Mr. Hanaway. I hope you realize, Mr. Field, that at this particular time we were involved in the problem of a large number of Defendants in this case, and there were a large number of Agents working on the case, and that is why I answer you—I do recall that there were Agents of the Federal Bureau of Investigation there, but to identify them, I can't do that. Mrs. von Moltke did not tell me that she had discussed the indictment with an agent of the Federal Bureau of Investigation prior to the time she came to my office nor did she tell me that she was advised by one of the Agents of the Federal Bureau of Investigation as to what the charges were. Petitioner's exhibit No. 1 appearance to be a mimeograph copy of the indictment to which Mrs. von Moltke plead guilty. I participated in its preparation but I didn't sign the exhibit. I signed the original indictment filed with the Court. I am aware of the fact that these charges are grounded upon a charge of conspiracy.

Q. (By Mr. Field). When Mrs. von Moltke was in your office, did you confer with her on October 7, 1943, prior to appearing before Judge Lederle, and did you dis-

cuss with her, or did she request information from you regarding paragraph 24, of the so-called overt acts, set forth in the indictment, that reads as follows: "That on or about December 20, 1941, in pursuance of said conspiracy and to effect the object thereof, Theresa Behrens, Grace Buchanan Dineen, and Marianna von Moltke met and conferred at 4553 Seebaldt Avenue, Detroit, Michigan."

A. I didn't discuss that with her and she didn't request information or advice of me in this connection.

Q. Did you discuss with Mrs. von Moltke at that time—

The Court: Ask a general question. Did you discuss with the Petitioner at that time any specific paragraphs of the indictment?

A. I did not, Your Honor.

The Court: Then you don't need to go into detail on it.

Q. (By Mr. Field) Did Mrs. von Moltke ask your advice as to what constituted a conspiracy?

A. No, sir.

Q. Did you voluntarily give information on that?

A. No, sir.

Q. Did Mrs. von Moltke ask you to explain the word "feloniously?"

A. No, sir.

Q. Or the words, "combine or conspire or confederate?"

Mr. Fordell: The witness testified that the petitioner didn't ask for any advice.

The Court: Didn't you say you did not discuss the indictment with the Petitioner, Mr. Babcock?

A. Yes, Your Honor, I did say so.

Mr. Fordell: I believe the record shows she didn't request any advice.

The Court: All right, go ahead.

Q. Do you recall Mrs. von Moltke signing any paper at the time she was before Judge Lederle?

A. As a matter of definite recollection, I do not, Mr. Field.

Q. Do you recall that Mrs. von Moltke said to you that the reason she was appearing there was because she

didn't want to go to trial and she therefore had to sign the waiver which she signed at that time?

A. Mrs. von Moltke didn't say that to me.

Q. I asked whether you recall that she said that to you?

A. If Mrs. von Moltke said that to me I would have recalled it. My answer is she didn't make any such statement to me.

Q. What statement did she make regarding the waiver?

A. None whatsoever, sir.

Q. Did she read it?

A. She appeared to be reading, as far as my observation could determine.

Q. Mr. Babcock, do you recall a visit to your office by Mr. Hanaway prior to October 7, 1943, and subsequent to October 1, 1943, or around October 3rd?

A. I recall that one of the Agents of the Federal Bureau of Investigation—whether it was Hanaway or not, I don't know—came to my office a few days prior to the time I saw Mrs. von Moltke in the Marshal's office.

Q. And did he have a message for you from Mrs. von Moltke?

A. He reported to me a conversation he said he had with Mrs. von Moltke.

Q. And what was that report?

A. He advised me that in a conversation with Mrs. von Moltke, she had expressed three conditions which gave her some concern in relation to her consideration of the question of whether she should change her plea to guilty. The three conditions being, namely, the matter of the newspaper publicity if she should plead guilty, the matter of her deportation consequently to serving a period of incarceration and the matter of the place of her incarceration, whether she might be close to Detroit.

Q. What did she want from you, Mr. Babcock?

A. I don't know.

Q. What did Mr. Hanaway say she wanted?

A. He didn't say she wanted anything. He was reporting to me a conversation.

Q. What did you tell the Agent?

A. I told the Agent that I could make absolutely no promises or assurances of any kind whatsoever.

Q. Did you tell the Agent to report that to Mrs. von Moltke?

A. No, sir.

Q. When Mrs. von Moltke asked you about the possibility of not being deported, did you tell her that the matter was entirely under the jurisdiction of the Immigration Department?

A. Yes, the Immigration and Naturalization Service.

Q. Did you advise her it was also under the jurisdiction of the Department of Justice?

A. I said in the hands of the Immigration and Naturalization Service of the Department of Justice.

Q. Did you consider in the discussion with Mrs. von Moltke the fact that she had been arrested on a Presidential Warrant?

A. No, sir. Pardon me. It may be, Mr. Field, that I was present during the hearing by the Alien Enemy Hearing Board when Mrs. von Moltke appeared before that board. Now, I am not just sure what the question means. When you say did I discuss with her the arrest on a Presidential Warrant. If I was present at the Alien Enemy Hearing Board, undoubtedly I questioned Mrs. von Moltke for the benefit of that Board.

Q. Was Mrs. von Moltke represented by an attorney at that time?

A. At the Enemy Alien Board?

Q. Yes.

A. No, sir.

Q. Was there any reason for that?

Mr. Fordell: I object to that. It is immaterial in this case.

The Court: Objection sustained.

Mr. Field: Exception.

Q. Did you point out to Mrs. von Moltke that there was a difference in the proceedings instituted in connection with a Presidential Warrant and the proceedings that came with the indictment?

A. At what time?

Q. At the time you spoke to her in your office, the day on which she pleaded guilty?

A. No, sir.

Q. Or prior thereto?

A. No, sir.

(Petitioner's Exhibit 1 was received in evidence.)

Q. Mr. Babcock, this is Petitioner's exhibit No. 2, bearing a waiver signed by Mrs. von Moltke, and I will ask you to look at it and say whether or not you can identify it?

A. What do you mean, identify it. You have just said it is a waiver that she signed. Is there any further identification you wish?

Q. Do you so identify it?

A. I don't know Mrs. von Moltke's signature. I assume it bears the signature—

Q. Do you have any independent recollection of Mrs. von Moltke signing this paper when she appeared before Judge Lederle?

A. I have an independent recollection that she signed a waiver to a right of counsel. I presume that is the document.

Q. Do you recognize Judge Lederle's signature?

A. Yes, sir.

Q. Does it appear on this exhibit?

A. Yes, sir.

Q. Did you prepare the phraseology on this particular form of waiver?

A. No, sir.

Q. Did you explain to Mrs. von Moltke the meaning of the words in this waiver: "Having been asked by the Court whether I desire counsel to be assigned by the Court, I hereby, in open court voluntarily waive and relinquish my right to be represented by counsel at the trial of the cause."

A. Did I explain those words?

Q. Yes.

A. No, sir.

Q. No explanation was given of the meaning of this waiver, is that right?

A. No. I don't say that is correct. Judge Lederle was extremely careful and meticulous to make sure, as he always does, that she understood what she was doing.

Q. Did Judge Lederle interrogate her or discuss with her the meaning of this waiver?

A. He interrogated her as to whether she wished to have counsel represent her and advised her as to signing a waiver of that right. Again, Mr. Field, I hope you understand, and I wish to say again that I have no distinct recollection now—let me put it this way: if any of our Judges have missed doing that, I would have remembered that very distinctly.

Q. Do you recall whether Mrs. von Moltke raised any question about the words in this waiver, that she had a right to be represented by counsel at the trial of the case?

A. I do not recall, no, sir.

Q. You do not remember Mrs. von Moltke stating that she didn't want a trial of the cause?

A. I do not, no, sir.

(Petitioner's Exhibit 2 was received in evidence.)

GRAFIN MARIANNA von MOLTKE having been previously duly sworn, was recalled and testified further as follows:

Re-Direct Examination

By Mr. Kronner:

Q. Did you ever have any dispute with your husband prior to your plea of guilty concerning the employment of counsel?

A. No.

Q. From the time you were arraigned before Judge Moinet on the 21st of September, to the 28th of September, when you went to Mr. Babcock's office, had you seen or visited with your husband?

A. I saw him in the Marshal's office on the 28th of September.

Q. Was that the first time you had seen him or talked to him from the time of your arraignment?

A. Yes. Excuse me. I had not seen him. I had not

seen my husband the last time before I was arraigned. He didn't know I was to be arraigned. He didn't know where I was.

Q. How long before you were arraigned did you see him the last time; before you were arraigned?

A. The last time before I was arraigned, to my recollection, was around the 20th of September.

Q. And from the 20th of September—then you were arraigned on the 21st?

A. Yes.

Q. And taken to the County Jail?

A. Yes.

Q. Where were you when the indictment was served on you?

A. At the Immigration Detention Home.

Q. I believe that Mr. Collard testified that on the 2nd of October he explained to you that the indictment was a different proceeding than the Enemy Alien Proceedings. Was that the first time you knew the difference?

A. Mr. Collard never said such a thing to me. Mr. Collard never explained that.

Q. When was the first time, if ever, that you knew there was a difference between the indictment with a conspiracy charge and the Enemy Alien Proceedings?

A. I didn't know, Mr. Kronner—I didn't know there was a difference.

Q. Did you have funds to hire an attorney.

A. No.

Mr. Fordell: I object to that.

A. Definitely not.

The Court: It will stand.

Mr. Kronner: There was testimony here that she didn't want an attorney. This goes to the very heart of this case, as to whether she was represented by counsel or whether she was denied the assistance of counsel.

The Court: You didn't understand what I said. That is what the Court asks a Defendant, just as Judge Lederle and just as Judge Moinet did, and that is have they funds with which to hire an attorney. If they say no, the Court says he will furnish counsel.

Mr. Field: If the Court please, I don't believe there is any testimony that Judge Lederle asked the question in this case.

The Court: I don't know whether there is testimony or not, but he drew attention to the fact that there was an attorney's name entered in the case, and he discussed it then. There is no question about that.

Q. (By Mr. Kronner) Did you have funds to hire an attorney?

Mr. Fordell: I object to that. It isn't material.

The Court: She may answer.

A. No. My husband had no funds to hire an attorney.

The Court: What did your husband earn?

A. \$35.00 a week.

The Court: Was he an instructor at the University?

A. He was dismissed.

The Court: I asked you what his salary was. What was his salary at the University?

A. Four thousand dollars.

The Court: And then when he was suspended he got a job that paid him \$35.00 a week, is that correct?

A. That is correct, Your Honor.

Q. (By Mr. Kronner) Did Judge Moinet tell you in open Court, at the time of the arraignment, that he would appoint an attorney for you?

The Court: You went over that repeatedly. It is on the record again and again.

Mr. Kronner: I am leading up to a question.

The Court: Don't lead up to it, ask it.

Q. (By Mr. Kronner) When he promised an attorney for you, or the attorney that was promised by Judge Moinet never came to you, what opinion did you form as to whether you were entitled to an attorney?

Mr. Fordell: I object to this question, because part of it is testimony on the part of the counsel, and it is asking for a conclusion.

The Court: Objection sustained.

Mr. Field: If the Court please, what the Petitioner is trying to prove is that she understood that as an enemy alien she wasn't entitled to an attorney, and when the

Judge told her she was, she believed that the Judge didn't know she was an enemy alien—

The Court: I don't know of any testimony to show that Judge Moinet didn't know what he was doing.

Mr. Field: No, Your Honor—

The Court: Objection sustained.

Mr. Field: Exception.

Q. After the visit of Mr. Okrent and Mr. Bricker, did you understand that they would represent you as a result of that visit?

A. No.

The Court: She testified to that before. This record is unduly long. Please don't make it too repetitious.

Mr. Kronner: No, your Honor. May I inquire whether you object to our inquiring as to her understanding as to the appointment of an attorney by Judge Moinet, as to whether she was entitled to an attorney or not?

The Court: You may ask her if you wish. It is already in evidence that Judge Moinet didn't tell her she wasn't entitled to it. In fact he was obliged to. There is no misinterpretation about that.

Mr. Kronner: No, but the misinterpretation came, Your Honor, when she understood she was to get an attorney and none appeared, and I think it is important that we should know her understanding about that.

The Court: Did she expect an attorney and did an attorney come? You may ask her those questions, though I think they are in the record in several forms.

Mr. Kronner: May I ask her then what conclusions she reached—

The Court: No, that is a matter of your argument, if there be an argument. I doubt very much if there will be if you keep on repeating the testimony.

Q. (By Mr. Kronner) By the way, Mrs. von Moltke, during the time you were testifying last evening, were you aware of anybody in the court room making signals to you?

A. No.

Mr. Fordell: I object to that—

The Court: I don't care whether she is aware or not.

Someone was making signals. That is what the Court spoke about. Whether she saw it or not, I don't know. I saw it.

Mr. Kronner: I think it is important to know whether she did.

The Court: How is it important? As I repeat again and again, there is no jury. You are conducting this case as if you had to impress a jury.

Q. (By Mr. Kronner): When was the first time you found out that the conspiracy case on the indictment was a different proceeding than the Enemy Alien Proceeding?

Mr. Fordell: I object to that.

The Court: Answer it. When?

A. I didn't find it out. I was not aware of different proceedings.

The Court: Now, I wouldn't go into that because she testified she read the indictment very carefully. Any other witness?

Mr. Kronner: That is all, Your Honor.

OPINION

(Filed April 24, 1946)

In the petition filed in this cause the petitioner directly or by implication charges that the District Attorney having the case in charge and agents of the Federal Bureau of Investigation mislead her or made promises to her that, which at least some degree, influenced her action in pleading guilty to the charge. I am of the opinion that these charges have now been abandoned by the petitioner but for the purpose of the record I wish to state most vigorously that there was absolutely nothing in the testimony sustaining such charges or implications. The conduct of both the officials of the District Attorney's office and the agents of the Federal Bureau of Investigation were meticulous in safeguarding the rights of the petitioner and that the record is utterly bare of any support of petitioner's contentions.

The petitioner is a woman obviously of good education and above the average in intelligence. Her knowledge of English was fluent and ample. She had discussed the case with various people before the plea of guilty was entered. In fact, at her own request, she had a conference with the chief assistant district attorney wherein she endeavored to secure from him some promises of leniency and convenience as an inducement to a plea of guilty. These advancements by the petitioner were, of course, repudiated by the district attorney and she was informed of the officials who had jurisdiction over the matter in advent of her plea of guilty.

The chief contention of the petitioner was that her waiver of her right to counsel was not competently and intelligently made. The plea was taken before Judge Arthur Lederle of this District. The evidence showed that the Judge inquired of her if she understood the charges made in the indictment. She answered in the affirmative. The Judge inquired if she desired the assistance of counsel. She answered in the negative. The Judge then inquired what was her plea. She answered guilty. In addition to this she submitted a signed waiver stating that she did not desire counsel.

A judgment cannot be likely set aside by collateral attack even by habeas corpus. In such circumstances it carries with it a presumption of regularity (*Franzeen vs. Johnston, Warden, 111 Fed. 2nd, 1817*). At page 1819 in the above citation the court said "The mere, bald assertion (*es-parte Deatherage, et al., 9th Cir., 98 Fed. 2nd, 793*) by a confessed criminal without corroboration (*Harpin vs. Johnston, Warden, 9th Cir., 119, Fed. 2nd, 434*), that he had been denied counsel is overcome when the allegations of the petition are met and controverted by the affidavits of court officials present at the time defendant's pleas were entered on them, to the effect that it was the uniform practice of the court, never known by the affiant to have been departed from, that the judge without exception would apprise all defendants appearing without counsel of their right, if without funds, to have the court appoint counsel for them and that the defendant

after having the indictment read admitted that he understood the nature of the charge therein contained and pleaded guilty, and at no time made a request for the assistance of counsel. * * * When we say the burden of proof rests with petitioner to establish that he did not completely and intelligently waive his constitutional right to assistance of counsel, we mean that petitioner must make a showing sufficient to overcome the presumption of regularity which attaches to a judgment of a court. The contention here made does not carry with it such a quality of proof. Moreover, we do not hold that the records of the trial court must show that the defendant was offered the assistance of counsel and that he refused (although this would be the better practice), such holding would be shifting the burden of proof from the petitioner to the court upon a mere assertion of the petitioner. The defendant could have refused the court's offer of counsel and that fact still not appear of record. We also take cognizance of the fact that the appellant pleaded guilty in both instances—he admitted commission of the crimes of which he was charged, and it is not asserted in the record that he was unable to understand the charges. Moreover, we do not lose sight of the important distinction between a plea of guilty and not guilty; a layman who pleads his innocence would be put to disadvantage in attempting to conduct his own defense and should have assistance whether he is able to pay for it or not; but the man who pleads guilty, admits he has no defense to make."

Judge Phillips of the Tenth Circuit Court of Appeals, in *Buckner vs. Hudspeth*, Warden, 105 Fed. 2nd, 396, 397 Certiorari, 308 U.S. 553, 60 S.Ct. 99, 84 L Edition—said "The constitutional right of the accused to have assistance of counsel may be waived. The burden rests upon petitioner to establish that he did not competently and intelligently waive his constitutional right. The determination of whether there has been an intelligent waiver of the right to counsel depends upon the particular facts and circumstances in each case, including the background, experience and conduct of the accused." *Johnson vs. Zerbst*, 304 U.S., 458, 464, 468. "Waiver of the right will

ordinarily be applied where the accused appears without counsel and fails to request that counsel be assigned to him." Other citations in harmony with the above are *Towne vs. Hudspeth*, Warden, 10th Cir., 108 Fed. 2nd, 676, 677; *McCoy vs. Hudspeth*, Warden, 10th Cir., 106 Fed. 2nd, 810, 811; *Wilson vs. Hudspeth*, Warden, 10th Cir., 106 Fed. 2nd, 812, 813 and *Harpin vs. Johnston*, 109 Fed. 2nd, 434, 9th Cir.

It is the further contention of petitioner that she could not plead guilty and waive right to counsel without legal advice. If such a proposition were true then no one could waive their constitutional rights. An argument similar in character to this put forth by the petitioner was reviewed and refuted in *Adams vs. U.S.* 317, U.S. 269. On page 272 the Court said: "The short of the matter is that an accused, in the exercise of a free and intelligent choice and with the considered approval of the court, may waive trial by jury, and likewise may be competently and intelligently waive his constitutional right to assistance of counsel. There is nothing in the constitution to prevent an accused from choosing to have his fate tried before a judge without a jury even though in deciding what is best for himself he follows the guidance of his own wisdom and not that of a lawyer. * * * It hardly occurred to the framers of the original Constitution and of the Bill of Rights that an accused, acting in obedience to the dictates of self interest or the promptings of conscience, should be prevented from surrendering his liberty by admitting his guilt. The Constitution does not compel an accused who admits his guilt to stand trial against his own wishes. Legislation apart, no social policy calls for the adoption by the courts of an inexorable rule that guilt must be determined only by a trial and not by admission. A plea of guilt expresses the defendant's belief that his acts were proscribed by the law and that he cannot successfully be defended. * * * And not even now is it suggested that a layman cannot plead guilty unless he has the opinion of a lawyer on questions of law that might arise if he did not admit his guilt. Plainly, the ingrafting of such a requirement upon the Constitution would be a gratuitous dislocation of the processes of justice."

Another statement of the law upon this point is contained in the case of *Dorsey vs. Gill*, 148 Fed. 2nd, CC of A, District of Columbia. The court stated that page 875 "In the second place there is no absolute requirement that a defendant be represented by counsel. An accused, in the exercise of a free and intelligent choice, and with the considered approval of the court, may competently and intelligently waive his constitutional right to the assistance of counsel. Hence, the mere fact that an accused was not represented by counsel is not in itself, alone, a sufficient basis for granting a writ."

The only substantial question in this case is whether the petitioner intelligently and knowingly waived her constitutional rights. It was her obligation to sustain the allegations of her petition by a preponderance of evidence. Not only has she failed in this but I believe that the evidence is overwhelming against her contentions. The petitioner is an intelligent, mentally acute woman. She understood the charge and the proceedings. She freely, intelligently and knowingly waived her constitutional rights. I conclude, therefore, that there is no merit in her petition and that it shall be dismissed together with the writ.

Ernest A. O'Brien,
United States District Judge.

Dated: April 24, 1946.

ORDER
(Filed April 26, 1946)

At a session of said Court held in the Federal Building, Detroit, Michigan, on the 26th day of April, 1946.

Present: The Honorable Ernest A. O'Brien, United States District Judge.

In this matter, the Court having duly considered the evidence produced by the respective parties herein and the Court having duly considered the briefs filed by counsel for said parties and the Court having rendered its opinion thereon.

It Is Hereby Ordered in conformity with said opinion that the Petition filed by the said Grafyn Marianna von Moltke and the Writ of Habeas Corpus issued by this Court be dismissed and that the said Grafyn Marianna von Moltke be remanded to the custody of the Superintendent of the Detroit House of Correction at Plymouth, Michigan.

Ernest A. O'Brien,
United States District Judge.

NOTICE OF APPEAL

(Filed June 18, 1946)

Notice Is Hereby Given that Marianna von Moltke (heretofore impleaded as Grafyn Marianna von Moltke) hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment and order entered in this action on April 29, 1946 dismissing writ of habeas corpus and remanding appellant to the custody of the Superintendent of the Detroit House of Correction.

Dated at Detroit, Michigan, June 18, 1946.

G. Leslie Field,
Attorney for Appellant,
2463 Penobscot Building,
Detroit 26, Michigan.

STATEMENT OF POINTS

(Filed June 18, 1946)

The points upon which appellant intends to rely on appeal are as follows:

1. The District Court erred in dismissing the writ of habeas corpus issued in this cause.

2. The District Court erred in failing to discharge petitioner at the conclusion of the hearing on said writ of habeas corpus.

3. The District Court erred in holding that petitioner had waived her right to assistance of counsel under the Sixth Amendment to the Constitution of the United States.

4. The District Court erred in holding that petitioner was not influenced, deceived and coerced into pleading guilty to a charge the nature of which she was unable to understand or comprehend by agents of the Federal Bureau of Investigation.

5. The District Court erred in sustaining an objection to the following question put to a witness for the government on cross examination:

"Q. (By Mr. Field) Did Mrs. von Moltke express to you her belief that her husband would be unable to get another job if he lost the job at the Wayne University, if the publicity continued?"

6. The District Court erred in sustaining an objection to the following question put to a witness for the government on cross examination:

"Q. Did you also give advice or discuss with Mrs. von Moltke the fact, if it was a fact, that she could in that manner (through the Probation Office) bring to the attention of the Court any matters she might wish to regarding involvement in the case?"

7. That the District Court erred in finding under the evidence that "The Petitioner is an intelligent, mentally acute woman. She understood the charge and proceedings. She freely, intelligently and knowingly waived her constitutional rights."

G. Leslie Field,
Attorney for Appellant,
2463 Penobscot Bldg.,
Detroit 26, Michigan.

STIPULATION RE COMPARISON OF RECORD

(Filed June 28, 1946)

It is hereby stipulated by and between the attorneys for the respective parties hereto that the Record on Appeal as printed be certified and transmitted by the Clerk of the United States District Court for the Eastern District of Michigan to the United States Circuit Court of Appeals for the Sixth Circuit without comparison.

G. Leslie Field,
Attorney for Appellant.
Vincent Fordell,
Attorney for Appellee.

Dated at Detroit, Michigan
June 28, 1946.

DESIGNATION OF RECORD

(Filed June 18, 1946)

Appellant designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Petition for writ of habeas corpus with attached copy of commitment.
2. Affidavit of Archie Katcher.
3. Affidavit of Harry Okrent.
4. Order to show cause dated February 7, 1946.
5. Order for writ of habeas corpus dated February 21, 1946.
6. Writ of habeas corpus dated February 21, 1946.
7. Answer to petition for writ of habeas corpus with attached exhibits A (copy of indictment) C (order allowing withdrawal of plea of not guilty and entry of plea of guilty) D (waiver of assignment of counsel: photostat to be included in record): E, F. and G (motion for leave to withdraw plea of guilty, affidavit in support hereof and order denying motion).
8. Appearance of Archie Katcher as attorney for Marianna von Moltke and another in connection with arraignment on indictment mentioned in paragraph 7 above.
9. Transcript of proceedings including testimony of witnesses Marianna von Moltke, Archie Katcher, Isadore A. Berger, Charles T. Hanaway, James H. Kirby, E. Bert Collard, Jr., Robert S. Dunham and John W. Babcock and evidence given before the Honorable Ernest A. O'Brien, District Judge, on March 11, 12, 1946, including Exhibits 1 and 2 which are the same as Exhibits A and D mentioned in paragraph 7 above.

10. Opinion of court filed April 24, 1946.
11. Order dismissing writ of habeas corpus and remanding petitioner to custody of Superintendent of Detroit House of Correction.
12. Statement of points on which appellant intends to rely.
13. Notice of appeal.
14. This designation.

G. Leslie Field,
Attorney for Appellant,
2463 Penobscot Building,
Detroit 26, Michigan.

CERTIFICATE OF CLERK

EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISIONS—SS:

I, George M. Read, Clerk of the United States District Court for said District, do hereby certify that the within and foregoing numbered pages contain a full and complete copy of all papers filed and all proceedings in said cause, in accordance with the designation of attorneys for appellant, as to contents of record on appeal, and in accordance with the stipulation entered into between attorneys for respective parties in said cause, waiving comparison by the Clerk of the record on appeal.

In testimony whereof, I have hereunto signed my name and affixed the seal of said Court at Detroit, this day of, 1946.

George M. Read,
Clerk, United States District Court,
Eastern District of Michigan.

By
Deputy Clerk.

PROCEEDINGS IN THE

United States Circuit Court of Appeals**FOR THE SIXTH CIRCUIT.**

CAUSE ARGUED AND SUBMITTED

(October 23, 1946—Before: ALLEN, McALLISTER and
MILLER, JJ.)

This cause is argued by G. Leslie Fields for Appellant and by Vincent Fordell for Appellee and is submitted to the Court.

JUDGMENT

(Filed March 10, 1947)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed March 10, 1947)

Before ALLEN, McALLISTER and MILLER, Circuit Judges. ALLEN, Circuit Judge. The appellant's petition for writ of habeas corpus, after full hearing by the District Court, was denied, and this appeal was instituted. The case arises out of the following facts:

The appellant, together with 23 others, was indicted for conspiracy with each other and with the German Reich to violate § 32, Title 50, U. S. C.

On September 21, 1943, the appellant was arraigned, and under advice of counsel appointed at that time by the court, she stood mute and a plea of not guilty was entered. On October 7, 1943, appellant waived her right to be represented by counsel and changed her plea of not guilty to guilty. The record presents a written waiver, which reads as follows:

"I, Marianna von Moltke, being the defendant in the above entitled cause, having been advised by the Court of my right to be represented by counsel, and having been asked by the Court whether I desire counsel to be assigned by the Court, do hereby, in open court, voluntarily waive and relinquish my right to be represented by counsel at the trial of this cause."

On August 7, 1944, the appellant filed a motion for leave to withdraw her plea of guilty on the ground that it was made "under circumstances of extreme emotional stress and during a time of extreme mental disturbance, without knowledge of her legal rights and without a thorough understanding of the nature of the offense charged. . . ." The motion was denied, on the ground that the appellant thoroughly understood the nature of the charge and changed her plea after due deliberation, and also because the motion was not filed within the period fixed by Rule 2(4) of the Rules of Criminal Procedure for withdrawal of pleas of guilty. The appellant then filed a petition for a writ of habeas corpus, which was dismissed by the District Court upon substantially the same grounds.

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A majority of the court holds that the judgment is valid and that the application for a writ of habeas corpus was rightly denied. The appellant was unquestionably under mental stress, which would be the case as to countless defendants accused of felony. The record shows, however, that she is extremely intelligent. She came to this country from Germany in 1927, has resided in Detroit since 1930, and for a foreign-born person she exhibits a remarkable command of the English language.

Appellant states that she read the indictment. She contends that she did not understand it; but the attorney appointed by the court to represent her at the time of the arraignment, who certainly is a disinterested witness, testified that she and her companion, Mrs. Leonhardt, also indicted under the same charge, led him to believe that they understood. He stated: "Well, I asked both of them; that is, both at once, whether they understood what this was all about. I believe that is quite similar to the language I used. And one or the other of them said, yes, they did understand, and the other indicated that she, too, understood. And then I asked if they felt that they were guilty or not guilty, and both indicated that they felt they were not guilty. I then rather hurriedly explained to them the advantage of standing mute as against pleading not guilty at that moment, and it was agreed that they would both be stood mute." Later the attorney reiterated that "they both indicated their understanding," and both indicated that they were innocent. Subsequently, upon September 25, 1943, appellant was questioned at length about the indictment by two attorneys sent by her husband. These attorneys informed appellant that they would not represent nor advise her. However, they were with her two and a half hours, and the testimony of one of them is as follows:

"Q. Your purpose was to discuss this case with her?

A. That is right.

"Q. And you did discuss this case with her? A. That is right.

"Q. You read the indictment at that time? A. Yes. I did; yes.

Opinion

"Q. Did you read it to her, to Mrs. von Moltke? A. I read parts of it. There were certain—she stated her story, and then I wanted to—well, it was a form of cross-examination. There were certain charges in the indictment, and I said, well, how about this? and then she gave me her answer to that.

"Q. You examined her insofar as the indictment affected her? A. Yes, sir.

"Q. So you covered the charges that were more or less directed toward her? A. Not—I may have, but not fully. I just picked up as I glanced through it. It was quite lengthy. And I glanced through it, and as I found something in there that pertained to her that I thought might be embarrassing to answer, I presented it to her to see what she had to say, and she gave me an answer.

.

"Q. But she did protest her innocence of the charges contained in the indictment? A. That is correct.

"Q. So part of the time that you spent with her was devoted to the discussion of this case? A. Well, it was all around the case, and the incidental phases of the case."

The second attorney did not testify in the case, due to illness. It is uncontradicted that these lawyers told appellant if she was guilty, to plead guilty, and if not, not to do so.

Appellant's own testimony contradicts her statement that she did not understand the charge. On cross-examination she testified as follows:

"Q. Mrs. von Moltke, when you were served with the indictment in this case, did you read it? A. I read it.

"Q. And after you had read the indictment, did you feel you were innocent of the charges that were stated in the indictment? A. Yes, sir, definitely so.

"Q. You did not feel you were guilty of those charges that you read in the indictment? A. I did not feel guilty of those charges in the indictment.

"Q. Then you knew what the charges were in the

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indictment. A. Oh, no, and so far I might explain that to you, I knew—

“Q. Just answer my question.

“The Court: Answer the question.

“A. Yes, I knew, not what the charges were, but I knew as I said before that I saw I was accused of something of which I was not guilty. That was how I understood that.

“Q. Well, you read the indictment. Isn't that right?

A. I read the indictment.

“Q. And you felt you were innocent of the charges that were described in that indictment? A. And the overt acts.

“Q. And the overt acts? A. Yes.

“Q. Do you recall how many overt acts you read in that indictment, approximately? A. Five.

“Q. Now, after you talked to Mr. Collard, did you still feel you were innocent of those charges? A. Yes, sir, because I told Mr. Collard so.

“Q. Regardless of what Mr. Collard told you, you still felt you were innocent of the charges in the indictment? A. Yes, sir.”

Appellant saw her husband twice a week between the time of arraignment, September 21, 1943, and October 7, 1943, when she withdrew her plea. He had a Ph.D. degree, and, as appellant said, “a certain amount of education in German law.” He repeatedly advised appellant not to change her plea, and told her to get a lawyer. She says that she did not know she was entitled to a lawyer; but on the other hand, she stated that Judge Moinet informed her that she was entitled to counsel. Officials of the F. B. I. told her the change of plea was a question for her or her attorney. They also told her that she should in no case plead guilty unless she was guilty. The appellant admits that no promises or threats were made to her. She stated on several occasions that she did not wish to consult a lawyer, but

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desired to settle the matter herself. On her own initiative she sent the chief assistant district attorney, through an F. B. I. agent, a proposition to plead guilty to the indictment if the district attorney's office would agree to certain conditions: (1) that she be not deported; (2) that she be sent to some penitentiary near Detroit, and (3) that the newspaper publicity be stopped, because her husband had been an instructor at Wayne University. The assistant district attorney stated that he had no control over such matters, and could make no such agreement, but would recommend that if she pleaded guilty she be imprisoned near Detroit. When this was communicated to the appellant she indicated that she still desired to plead guilty.

When the appellant appeared in court to change her plea, the judge said he could not accept the change of plea because an attorney should be present. The case is sharply differentiated from *De Meerleer v. People of the State of Michigan*, 7 U. S. —, decided February 3, 1947. There "At no time was assistance of counsel offered or mentioned" to the seventeen year old defendant. Here the trial court proceeded on the application for change of plea to protect appellant's rights with meticulous care. Although it was explained that appellant desired to change her plea, the judge was not satisfied with reference to the question of the attorney. Appellant had already been informed by one judge that she was entitled to an attorney appointed by the court, and now a second judge put the specific question to her, whether she was represented by counsel, whether she wished counsel assigned by the court, and she said no. The judge inquired whether the plea was made on the suggestion of any Government agent, and appellant said no. He asked whether any threats or promises had been made to her, and she said no. He inquired whether the indictment had been explained to her, and she admits that she said yes. Her testimony in the habeas corpus proceeding, with reference to change of plea, continues as follows:

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"Q. Now, then, I ask you, had it been explained to you? A. No, it had not been fully explained to me.

"The Court: Well, you read it, didn't you? You seemed to remember about various paragraphs that cover the Overt Acts, and described them as 'Over' Acts. You had read it, had you not? The Witness: I had, your Honor.

"Q. Was there any further conversation between you and the Court? A. Judge Lederle said, 'And you plead guilty because you feel you are guilty?' and I said, 'Yes.'

"Q. At the time you gave that answer, was it true that you were pleading guilty because you knew you were guilty? A. It was not, because I pled guilty to cooperate."

The burden was on the appellant to establish as a matter of fact that she did not competently and intelligently waive the right to have assistance of counsel and that she did not understand what she was doing when she changed her plea. The trial court, who saw the witnesses, held that appellant did not sustain this burden, and a majority of this court agrees with that conclusion. We think the testimony quoted shows that appellant understood the charge, that she understood the consequences of pleading guilty, and that she waived the right to have counsel after long and deliberate consideration and full understanding that an attorney would be appointed for her without charge, if she desired; and with a complete understanding of what this attorney could do for her.

It is not the law that an accused cannot enter a valid plea of guilty without the assistance of counsel. As stated by the Supreme Court in *Adams v. United States*, 317 U. S. 269, 275:

"The short of the matter is that an accused, in the exercise of a free and intelligent choice, and with the considered approval of the court, may waive trial by jury, and so likewise may he competently and intelligently waive his Constitutional right to assistance of counsel. There is nothing in the Constitution to prevent

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an accused from choosing to have his fate tried before a judge without a jury even though, in deciding what is best for himself, he follows the guidance of his own wisdom and not that of a lawyer."

Also the motion to withdraw the plea was filed far too late, having been filed some ten months after appellant pleaded guilty. While the motion was made before sentence, it was not within the ten-day period fixed by Rule 2(4) of the Rules of Procedure for Pleas of Guilty, 18 U. S. C., following § 688.

The harshness of the ten-day rule is emphasized by appellant's counsel, who urge that appellant has a diabetic child, and necessarily was under great emotional disturbance during the period between arraignment and plea of guilty. A situation equally grave was presented in *Swift v. United States*, 148 Fed. (2d) 361 (C. A. D. C.), in which an appellant who had been advised that the strain of the trial would endanger her life, pleaded guilty to three indictments. A year after imposition of sentence she filed a motion to be permitted to change her plea. Her motion was supported by a physician's affidavit describing appellant as "suffering from one of the most dangerous heart conditions." The court held, notwithstanding, that the trial court was without jurisdiction to grant the motion.

To the same effect are *Hood v. United States*, 152 Fed. (2d) 431, 435 (C. C. A. 8), and *United States v. Achtner*, 144 Fed. (2d) 49 (C. C. A. 2). The latter decision declared that while this rule may be too harsh, it is the law applicable to cases of this kind. The rule has now been changed [Rule 32(d) of Rules of Criminal Procedure, effective March 19, 1946], but in its old form it is controlling here.

The judgment and sentence are valid, and the judgment of the District Court is affirmed.

Opinion

McALLISTER, Circuit Judge, dissenting:

On August 24, 1943, between 6 and 7 o'clock in the morning, six men came to the home of Marianna von Moltke, Appellant, in Detroit, Michigan. They were agents of the Federal Bureau of Investigation of the Department of Justice. Appellant's husband admitted them to the house, and they immediately went to her bed-room. She was in bed. One of the men thereupon arrested her and ordered her to go into the living room, which she did. She then dressed. The agent who ordered her to go into the living room had a presidential warrant for her arrest as a dangerous enemy alien. The various other agents asked permission of the husband to search the house, and were given such permission. Mrs. von Moltke was then taken by the government agents to the offices of the Federal Bureau of Investigation in the Federal Building, at Detroit. She was fingerprinted, photographed, and examined by a physician. She was then subjected to questioning by two agents of the Federal Bureau of Investigation from 10 o'clock in the morning until 8 or 9 o'clock at night. This questioning lasted for four consecutive days. During that time she was locked in a room and not allowed to see, or speak with, anyone except government agents. At the end of the fifth day of such imprisonment, she was released from the locked room and incarcerated in the Wayne County jail. During these five days she had not been allowed to see, or speak with, her husband, or anyone else.

Mrs. von Moltke came with her husband to the United States from Germany in 1926. Her passport discloses her title to have been Graf, or Countess, but she has never used that title in this country. Her husband Heinrich von Moltke was educated in Germany before the First World War, and obtained a degree of Doctor of Philosophy. He became a naturalized citizen of the United States in 1937. Mrs. von Moltke's application for citizenship was pending at the time of her arrest. Heinrich von Moltke had been employed as an instructor in the German language at Wayne University, in Detroit,

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at a salary of \$4,000 a year. Upon her arrest, he was immediately discharged from his position. He later got a job that paid him \$35.00 a week. No accusations have ever been made against him. Mrs. von Moltke at the time of her arrest was living with her husband and two of her children. The youngest child was then nine years of age, and suffered from diabetes. He needed constant supervision and attention. He required two injections of insulin each day, and a strict diet. She had to take care of the child constantly. Because of these circumstances she was under great nervous tension. After the second day of her arrest one of the government's agents secured permission to call her husband and related to her what her husband said about the child. Afterward, Mr. von Moltke placed the child with some of their friends, but they subsequently did not want to care for him, and he had to be placed with others. Mrs. von Moltke's social activities were limited to working for the Red Cross, membership in the Parent-Teachers Association, and volunteer social work with the Y. W. C. A. She had also engaged as a volunteer in the work of gas and sugar rationing for the government.

On September 1, 1943 Mrs. von Moltke was taken before an Enemy Alien Hearing Board. Up to this time she did not know why she was being detained; no charges had been made against her, and she had not been allowed to see an attorney. She was told that as an enemy alien she was not allowed to have legal counsel. Later, on September 18, the matron at the County Jail gave her a copy of an indictment against her. This indictment was for conspiracy to violate the Espionage Act.

On September 21, she was taken before the District Court, to plead to the indictment. She had no counsel, and had discussed the charges with no lawyer. The District Judge, finding that she was not represented by counsel, stated that she was entitled to legal assistance, and would have to have a lawyer to represent her. He then called some young attorney from a group sitting in the court room and told him to represent her. The lawyer

objected, and stated that he did not want anything to do with the case. The District Judge then assured him that it would be only for the arraignment. Upon this assurance, and without seeing the indictment or discussing it with Mrs. von Moltke, the attorney had a short whispered conversation with her and told her that if she felt she was not guilty, it was advisable to stand mute. She agreed to do so, and the attorney then informed the court that the prisoner was standing mute. A plea of not guilty was entered. The District Judge then stated that he would appoint an attorney for her right away, and she was taken back to the County Jail. No attorney came to see the Appellant, and no attorney was thereafter appointed for her.

The jail matron, upon Appellant's return to her cell, informed her that she had strict orders to keep her incommunicado. However, agents of the Federal Bureau of Investigation talked with her daily from then on until October 7. During that time Appellant was greatly worried about the possibility of being attacked by persons on her way to court, "to face a hostile public." She inquired of one of the agents of the Federal Bureau of Investigation: "Is it really so bad, that the public is so hostile?" . . . "If we go to Court, will we be bodily attacked?" She was told by the agent: "It is war time—you have to bear that in mind. Public sentiment grows from war hysteria. You don't need to be afraid; you will be protected." However, she testified: "But they left me with the thought that it is terrible to go to court and face a hostile public." Moreover, she had been told by one of the other prisoners, that unless she pleaded guilty, her husband would be involved and implicated in the criminal proceedings. She asked one of the agents whether that would be the case, and he told her that he could not answer that question.

Two lawyers called upon her at the jail during this period. They had been sent by Appellant's husband to talk to her, but they had not been retained as counsel. In fact, they told her that nothing she said would be

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held in confidence by them; and they afterwards advised her husband that they could not be connected with the case. At no time did they discuss her legal rights or advise her as to any course of action, or possible legal defenses, or explain the charges made against her. Mrs. von Moltke repeatedly asked the agents of the Department of Justice for advice as to whether she should plead guilty or not.

Later on Mrs. von Moltke had a talk with agent Collard of the Federal Bureau of Investigation. He told her that he was also a lawyer, and that he had been admitted to practice. He was the same agent who had arrested her, and who had interrogated her during the four days following her arrest. Mrs. von Moltke appealed to him to explain the indictment to her; and he consented not only to explain the indictment, but to advise her of the meaning of conspiracy. For this purpose, the matron at the jail gave them an office. The agent's explanation of the indictment and of the meaning of conspiracy lasted for several hours.

In dissenting from the views expressed in the accompanying opinion, I consider this interview and the agent's explanation to be the crucial and decisive feature of the case.

Mrs. von Moltke told the agent that she had never done any of "those things" that were designated as overt acts. "Mr. Collard explained to me that the 'Overt' Acts in the indictment do not mean the real thing. . . . Mr. Collard explained to me that the indictment doesn't cover the charge, and I seemed not to be able to understand, so Mr. Collard explained the indictment to me by an example, which he called the 'Rum Runners.' . . . That if there is a group of people in a 'Rum' plan, who violate the law, and another person is there and the person doesn't know the people who are planning the violation and doesn't know what is going on, but still it seemed after two years this plan is carried out, in the law the man who was present becomes . . . the person is guilty of conspiracy. And I said to Mr. Collard: 'If that is

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the law in the United States, I don't know how I ever can prove myself innocent, and how will any judge know how am I guilty if this is the law?' . . . Then I said: 'How will any judge know how to judge me like that, if one is innocent and the law is such and such?' And Mr. Collard told me about the Probation Department. . . . He explained to me that it is the duty of this office—the Probation Department—to collect the proper data and present it to the judge, so that the judge will know what to go by."

All of the foregoing testimony of Mrs. von Moltke on the hearing is undisputed. Mr. Collard was a witness, and on this phase of the case he testified as follows:

"Q. Did you try to explain it (the indictment) to her?

A. Yes, as I remember, I did. . . .

Q. Well, in explaining the indictment to her, what explanation did you give her?

A. I just tried to explain it the best I could. . . .

Q. Did you explain to Mrs. von Moltke the nature of a conspiracy?

A. I attempted to, yes.

Q. To the best of your ability?

A. Yes, sir.

Q. And did you spend some time on that particular phase of your explanation?

A. I do not recall, but we probably did.

Q. And did you during that discussion use an illustration about a rum runner?

A. Well, I heard Mrs. von Moltke say that, and since she did I have been trying to recall, and I cannot remember such an illustration.

Q. I see.

A. But it is quite possible that Mrs. von Moltke's memory is better than mine, and I may have used such an illustration. . . .

Q. Did you in any way explain, or attempt to explain to Mrs. von Moltke the meaning of the word 'feloniously'?

A. I cannot remember her asking that; but if she did ask me, I probably tried to explain it to her; but whether that was one of them, I just don't remember.

Q. And did you explain to Mrs. von Moltke the nature of an overt act?

A. Well, if she asked me, I probably tried to, but whether she asked me or not I just don't remember.

Q. And did Mrs. von Moltke ask you whether merely conferring with people who later turned out to be guilty of criminal acts would also make her a criminal, and guilty of criminal acts?

A. I do not just recall that particular question. It is quite possible."

From the record and the transcript of testimony we are constrained to conclude that Mr. Collard advised Mrs. von Moltke as to the indictment and the legal meaning of conspiracy, as she testifies. However, it can be said that Mr. Collard's obvious honesty and integrity in the matter is most commendable. Although he was mistaken in his advice to Mrs. von Moltke, he manfully declined, on the witness stand, any opportunity to shade, obscure, or to deny that he did give her such advice, either to excuse himself, or to defeat her contentions; and his conduct in this respect as an investigatory and law-enforcement official of one of the most distinguished branches of our government, is highly honorable, exemplary and worthy of praise.

Some days after her interview with Mr. Collard, Mrs. von Moltke decided to plead guilty, without consulting any lawyers other than the government agent. This action was directly contrary to the advice and wishes of her husband. She was taken before the District Court; she then withdrew her plea of not guilty, and entered a plea of guilty. The court asked her if she wished counsel, and she said that she did not. He further asked her if she was pleading guilty because she was guilty, and she answered in the affirmative. She signed a waiver of

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counsel, reciting that she had been advised by the court of her right to be represented, and had been asked whether she wished to have counsel assigned to her, but that she had voluntarily in open court waived and relinquished the right to be represented by counsel on the trial. She was then remanded to jail to await sentence.

Some months later, before sentence, she was advised that, in a criminal case, the accused was presumed to be innocent, and that if she had gone to trial, she would not have been obliged to prove herself innocent of the charges against her. She testified:

"I learned that in the United States, under the constitution, as a defendant you do not have to prove yourself innocent as in the European countries, that it is the task of the prosecuting attorney to prove you guilty. . . .

I first found that out on January—Monday, January 17, from Mr. Dunham (an agent of the Federal Bureau of Investigation). Mr. Dunham came up and we had a conversation on that. Mr. Dunham said it is true that in the United States, under the constitution, nobody is guilty until he has been proven guilty. That was the first time that I talked to Mr. Dunham about it. I asked again for Mr. Collard, to inform me whether this is my right; whether people who plead guilty are permitted in America to withdraw their plea. This was on January 6. After this we had several conversations. Mr. Dunham, on January 17, answered my question by saying that under the American constitution nobody is guilty until he has been proven guilty."

Color is given Mrs. von Moltke's contention in this regard, by reason of the fact that Agent Dunham was called by the government as a witness on the hearing on Appellant's petition, and he denied none of the foregoing statements.

Legal counsel thereafter retained for her then moved to withdraw her plea of guilty. This was denied by the

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District Court November 14, 1944, and on the same date, more than thirteen months after the entry of her plea of guilty, she was sentenced to imprisonment for a term of four years.

The undisputed evidence from the hearing before the District Court on Appellant's petition for a writ of habeas corpus clearly substantiates her claim that the chief reason why she pleaded guilty was because of the legal advice given to her by an agent of the United States government. This advice, from a man who was a lawyer, was, though honestly given, false. Believing that the information she received was true, and unquestioningly trusting in the honesty and integrity of the agent, Appellant was convinced that if it were proved that she had merely been present when acts of conspiracy, of which she had no guilty knowledge, were carried on, under the law, as explained to her, she would be equally guilty with the conspirators, and that she would have the burden of proving her innocence on a trial.

The indictment in its allegations of Appellant's participation in the conspiracy was in general terms. Out of 47 Overt Acts charged, Appellant was named in five, as follows: "In pursuance of said conspiracy and to effect the object thereof" she "met and conferred with" a certain woman on two occasions, and with the same woman and another on one occasion, and with these two and a third woman on another occasion; and that she introduced one Arndt to the first named woman on another occasion.

On the hearing of her petition for a writ of habeas corpus before the District Court, in response to questions by the trial judge, she unqualifiedly denied all knowledge of any conspiracy against the government, all charges that she had ever introduced an individual to an enemy agent as charged, or any knowledge that the woman whom she was accused of meeting with, was an enemy agent; and no proof was introduced by government counsel to the contrary.

The contentions that Appellant freely, intelligently,

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and knowingly waived her constitutional right to have the assistance of counsel in her defense, as guaranteed by the Sixth Amendment, and the contention that she was deceived by a government representative into pleading guilty and thus deprived of her liberty without due process of law, contrary to the guarantee of the Fifth Amendment, are inextricably bound together.

We can only conclude from the record before us that it was the false information and legal counsel given to her by the government agent as to what the charge of conspiracy embraced, and what the law of conspiracy provided, that induced Appellant to plead guilty. She relied upon this counsel, as coming from a lawyer, in whom she had confidence. Her waiver to the right of legal assistance arose out of her reliance upon such advice. If that advice had been correct, there would have been no presumption of innocence entertained on her behalf on the trial, and she would have had little chance, if any, to escape conviction. Prior to her sentence, she had never been advised as to her rights and as to the charges against her, except by the government agent. From the undisputed evidence in the record before us, I am of the opinion that Appellant clearly sustained the burden of establishing before the District Court that she did not competently and intelligently waive her right to counsel, and that she pleaded guilty because of the erroneous and false advice given to her, innocently enough, by the government representative. See *Waley v. Johnson*, 316 U. S. 101; *Walker v. Johnson*, 312 U. S. 275.

It is true, as stated in the accompanying opinion, that Appellant's previous petition to withdraw her plea of guilty was filed too late to permit of its consideration by the District Court, because of Rule 2(4) of the Rules of Procedure for Pleas of Guilty, then in effect and which has since been changed. Rule 32(d) of the Rules of Criminal Procedure, effective March 19, 1946. But we are here concerned not with the determination of Appellant's right to withdraw her plea of guilty, but with the allowance of her petition for a writ of habeas corpus, based upon denial of her constitutional rights.

Clerk's Certificate

In accordance with the foregoing a judgment should be entered setting aside the judgment heretofore rendered. The writ of habeas corpus should be granted and the Appellant remanded to the District Court for trial, on a plea of not guilty. 28 *USCA*, Sec. 461; *Johnson v. Zerbst*, 304 U. S. 458.

CLERK'S CERTIFICATE

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *Marianna von Moltke v. A. Blake Gillies*, No. 10,307, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 24th day of March, A. D. 1947.

J. W. MENZIES,

*Clerk of the United States Circuit Court.
of Appeals for the Sixth Circuit.*

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 2, 1947.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1466)